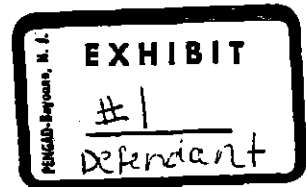


2(b)



**CANTON DROP FORGE**  
**Information for Bidders**  
**Proposal, Contract & Specifications**  
**for**  
**REMOVAL & BIOREMEDIATION OF THE SLUDGE**  
**LINING LAGOONS #1 AND #2**



**HAMMONTREE**  
**& ASSOCIATES, LTD.**

**RECEIVED**

**DEC 20 1996**

**CANTON DROP FORGE**

**ENGINEERS • PLANNERS • SURVEYORS**

**5233 STONEHAM ROAD • NORTH CANTON, OHIO 44720-1594**  
**(216) 499-8817 • FAX (216) 499-0149**  
**TOLL FREE 1-800-394-8817**

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**INVITATION & INFORMATION**

**FOR BIDDERS**

## INVITATION FOR BIDS

Sealed proposals addressed to Canton Drop Forge will be received at their offices at 4575 Southway Street S.W. Canton, Ohio, 44706 until 12:00 P.M., local time, on the 1 day of May 1995, for furnishing all engineering, labor, materials and equipment necessary to complete the project known as the BIOREMEDIATION. All bids will be publicly opened and read aloud immediately after opening.

Contract Documents, bid sheets, plans and specifications can be obtained at the office of Canton Drop Forge. Copies may be obtained upon payment of a nonrefundable fee of \$25.00 for each set of documents. Checks shall be made payable to Canton Drop Forge. Copies of plans and specifications may be mailed for an additional \$5.00. Mail check for \$30.00 to Canton Drop Forge P.O. Box 6902 Canton, Ohio, 44706 Attention: Keith Houseknecht.

Work will consist of removal and bioremediation of sludge lining Lagoons #1 and #2 in accordance with the contract documents and for fully described as follows:

The project will consist of removing the sludges lining Lagoon #1 and Lagoon #2 and using ex-situ bio-remediation technology to reduce Total Petroleum Hydrocarbon (TPH) contamination levels of the excavated materials to below the target level of 380 ppm.

The estimated removal quantities are 3,000 c.y. from Lagoon #1 and 6,000 c.y. from Lagoon #2. During excavation the contractor shall maintain quantity estimates and keep CDF informed of the quantity removed. If it appears that material beyond the estimated quantity will require removal, the contractor shall immediately contact CDF representatives. CDF may halt removal prior to reaching the estimated quantities or request the removal of material beyond the estimated quantities. Payment will be based on the actual quantity of material removed and the unit prices. Tasks related to the bioremediation project include, but are not limited to, excavation of lagoon linings, transport of excavated materials to the on-site treatment areas, treatability studies, bio-cell design, bio-cell construction, bulking of excavated materials to enhance bioremediation, inoculation of materials to be treated and maintenance of biocell(s).

Once excavation of the lagoon materials is complete the contractor shall immediately "seed" the lagoon lining and walls prior to putting the lagoon back into service.

The contractor shall also estimate the type and number of samples for laboratory analysis that shall be retrieved by an independent agent.

All bids must be submitted on the Bid Forms available with the specifications. Bid envelopes must be sealed and plainly marked:

## BID - BIOREMEDIATION - CANTON DROP FORGE

Bidders must submit two (2) copies of the completed bid forms.

Each bidder is required to furnish with its proposal, a Bid Guaranty Bond in accordance with Section 153.54(B) of the Ohio Revised Code or bidders must submit a certified check in the amount of ten (10) percent of bid to guarantee that if the bid is accepted, a contract will be entered into and properly executed. Bid security furnished in Bond form, shall be issued by a Surety Company or Corporation licensed in the State of Ohio to provide said surety.

Each proposal must contain the full name of the party or parties submitting the proposal and all persons interested therein. Each bidder must submit evidence of its experiences on projects of similar size and complexity. The owner intends and requires that this project be completed no later than May 30, 1997.

Work shall be completed within seven hundred thirty (730) calendar days after the date of Notice to Proceed from Canton Drop Forge, weather permitting. The estimated construction cost as of March 1995 is \$200,000. A pre-bid conference will be held at Canton Drop Forge on April 21, 1995, at 10:00 A.M.

All bids will be opened and read at 12:00 Noon on May 1, 1995 at the Offices of Canton Drop Forge.

Canton Drop Forge reserves the right to reject any or all bids, and to waive any informalities or irregularities in the bids received.

Dated: April 17, 1995

---

Jerome P. Bressanelli  
President

## INFORMATION & INSTRUCTIONS TO BIDDERS

### PROJECT LOCATION AND SCOPE OF WORK

The project is located at the Canton Drop Forge ("CDF") Facility at 4575 Southway Street S.W. Canton, Ohio, 44706. The project will consist of the bioremediation of the sludges lining Lagoon #1 and Lagoon #2 at the CDF Facility. Either in-situ or ex-situ methods may be proposed. As well as the costs associated with each method, the bidder should include a list of "pros" and "cons" for each method. Bidders are not required to supply bids for both technologies. The goal of the bioremediation shall be to reduce the total petroleum hydrocarbon (TPH) contamination of the subject sludges to  $\leq 380$  ppm.

### EX-SITU BIOREMEDIATION

Ex-situ bioremediation will consist of excavating the lining of Lagoon #1 and Lagoon #2 and using ex-situ bio-remediation technology to reduce Total Petroleum Hydrocarbon (TPH) contamination levels of the excavated materials to the target level of 380 ppm.

The estimated removal quantities are 3,000 c.y. from Lagoon #1 and 6,000 c.y. from Lagoon #2. During excavation the contractor shall maintain quantity estimates and keep CDF informed of the quantity removed. If it appears that material beyond the estimated quantity will require removal, the contractor shall immediately contact CDF representatives. CDF may halt removal prior to reaching the estimated quantities or request the removal of material beyond the estimated quantities. Payment will be based on the actual quantity of material removed and the unit prices. Tasks related to the bioremediation project include, but are not limited to, excavation of lagoon linings, transport of excavated materials to the on-site treatment areas, treatability studies, bio-cell design, bio-cell construction, bulking of excavated materials to enhance bioremediation, inoculation of materials to be treated and maintenance of biocell(s).

If required, CDF will remove the floating contamination on Lagoon #1 and lower the liquid level of Lagoon #1 as much as possible prior to the start of the project. Once the bio-remediation project is initiated, the contractor will be responsible for the liquid remaining in Lagoon #1 and the routing of all storm and process water during the bioremediation project.

Once excavation of the lagoon materials is completed, the contractor shall immediately "seed" the lagoon lining and walls prior to putting the lagoon back into service.

The contractor shall also estimate the type and number of samples for laboratory analysis that shall be retrieved by an independent agent. These samples will be used to gauge the effectiveness of the bioremediation process.

#### IN-SITU BIOREMEDIATION

In-Situ bioremediation will consist of treating the materials lining Lagoon #1 to a depth (perpendicular to surfaces) of five (5) feet and the materials lining Lagoon #2 to a depth (perpendicular to surfaces) of eight (8) feet. The target of bioremediation shall be to reduce TPH levels to  $\leq 380$  ppm.

If required, CDF will remove the floating contamination on Lagoon #1 and lower the liquid level of Lagoon #1 as much as possible prior to the start of the project. Once the bio-remediation project is initiated, the contractor will be responsible for the liquid remaining in Lagoon #1 and the routing of all storm and process water during the bioremediation project.

The contractor shall also estimate the type and number of samples for laboratory analysis that shall be retrieved by an independent agent. These samples will be used to gauge the effectiveness of the bioremediation process.

#### CANTON DROP FORGE REQUIREMENTS

Canton Drop Forge (CDF) will provide access, water supply, reasonable security, restrooms, and potable water. CDF shall also make provisions for sampling, testing, and monitoring as deemed appropriate by the contractor. CDF will also be responsible for permitting.

#### ADVERTISEMENT AND BID OPENING

Any bid received after the time and date specified shall not be considered. After all bids are opened and read, the Engineer will tabulate, evaluate, and prepare a written recommendation to CDF, after which an award will be made.

#### CONDITION OF WORK

Bidders are advised to carefully examine the contract documents and design report for the proposed work. The contract documents indicate the work to be done. However, the bidders are expected to examine the site and to judge for themselves all circumstances affecting the cost of the work and the time required for its completion.

Each bidder must inform himself fully of the conditions relating to construction and labor under which the work will be performed. Failure to do so will not

relieve a successful bidder of his obligation to furnish all services, materials, equipment and labor necessary to carry out the provisions of the contract documents and to complete the contemplated work for the consideration set forth in his bid. Contractor shall carry out his work employing such methods or means so as to limit the interruption, interference and inconvenience to pedestrians, vehicles, and production in the project area.

The Contractor shall keep himself fully informed and shall comply with all existing and future laws, ordinances and regulations of the Federal, State, County and Municipal Governments, in any manner affecting his employees, or the conduct of the work, or the materials used or employed in the work.

#### TIME OF COMPLETION

Work shall commence within ten (10) days from the date of Notice to Proceed from CDF. Work shall be completed within seven hundred thirty (730) calendar days from the date of Notice to Proceed from CDF.

#### EXAMINATION OF SITE

The bidder's attention is directed to the necessity of examining the site of the proposed work. Before submitting a proposal, bidders shall inform themselves fully of the conditions relating to construction and labor under which the work will be performed. The bidders will have an opportunity to visit the site by appointment with Keith Houseknecht at CDF (216)477-4511. All bidders are required to meet with CDF representatives. It is understood that all bidders understand the scope of the proposed project and will base their bids on this knowledge. Any uncertainties should be addressed and qualified prior to finalizing bids.

#### PREPARATION OF PROPOSALS

Bids shall be submitted on the prescribed forms in these documents. All blank spaces must be filled in by typewriter or ink. All bids must be submitted in sealed envelopes bearing on the outside the name of the bidder, his address and the name of the project for which the bid is submitted.

#### RIGHT TO ACCEPT OR REJECT PROPOSALS

CDF reserves the right to reject any or all proposals, or parts thereof, to waive any informalities or irregularities in the proposals received and to accept any proposal which is deemed to be in their best interest.

## AWARD

Award will be made to the lowest responsible bidder based on the total price for the remediation of *both* Lagoons complete.

## ESTIMATED QUANTITIES

The estimated unit quantities listed on the proposal and bid form are to be considered approximate and are to be used only for the comparison of bids. Payments, except for lump sum items, will be made to the Contractor for actual construction quantities of work performed or materials furnished.

CDF reserves the right to increase, decrease or omit any item that it may deem advisable.

## ADDENDA AND INTERPRETATIONS

If any person who contemplates the submission of a proposal is in doubt as to the true meaning of any part of the plans, specifications or contract documents, he shall request an interpretation from the Engineer in writing prior to the date set for receiving proposals.

In the event of any error, omission or discrepancy in the plans, specifications and contract documents, the bidder shall request in writing an interpretation in advance of the taking of bids. Failing to do so, the Contractor must accept the ruling of the Engineer as to the correct intent.

Any and all such interpretations and any supplemental instructions will be in the form of written addenda to the specifications. Prior to the date fixed for receiving of proposals, all parties of record as having taken out a set of contract documents will receive a copy of the addendum or interpretation. Failure of any bidder to receive any addendum or interpretation shall not relieve the bidder from any obligation under his bid as submitted. All addenda so issued shall become a part of the contract documents and must be attached to each proposal.

## DEFAULTER

No contract will be awarded to any bidder who is in arrears to CDF upon debt or contract, or who is a defaulter as surety or likewise upon any obligation to CDF.

## BID SECURITY

Each bid shall be accompanied by a certified or cashier's check in the sum of ten percent (10%) of the total amount bid together with a consent of surety for total amount bid or a bid guaranty in the amount of one hundred percent (100%) of the bid.

Bid check must be drawn on a solvent bank and made payable to CDF.

Certified or cashier's check or bid bond shall be held as a guarantee that in the event the bid is accepted and a contract awarded to the bidder, the contract will be duly executed and its performance properly secured. Should the successful bidder fail or refuse to execute the contract, within ten (10) days after receipt of notification of award, said check and the amount represented thereby, will be forfeited to CDF as liquidated damages. The surety on any bond shall be liable to CDF in an amount equal to ten percent (10%) of the bid. All bid guarantees shall be conditioned that if the bid is accepted within sixty (60) days of the bid opening, a proper contract shall be executed.

## DISPOSITION OF BID SECURITY

After the receipt of bids, the lowest and best bidder will be determined. The bond or check of all except the lowest three bidders will be returned within 48 hours after award of the contract or rejection of all bids, but in any case, not more than sixty (60) days following the opening of bids. The remaining deposits will be returned as soon as a contract is executed and secured. In case the lowest responsible bidder shall fail to execute and secure a contract within ten (10) days, the award may be vacated and deposit forfeited as liquidated damages, and the contract awarded to the next lowest responsible bidder who shall thereupon execute the contract and furnish the required bond or security for the performance of the contract within ten (10) days or forfeit his deposit as liquidated damages.

## PERFORMANCE BOND

The successful bidder will be required to furnish a bond for the faithful performance of the contract of a sum not less than one hundred percent (100%) of the total price bid for the completed work, said bond to be that of an approved surety company, to the satisfaction of CDF.

Agents of bonding companies which write bonds for the performance of the contract shall furnish power of attorney, bearing the seal of the company, evidencing such agent's authority to execute the particular type of bond to be furnished, and evidencing also the right of the surety company to do business in the State of Ohio. Copy of this proof shall be attached to each copy of the contract.

The successful bidder have the obligation of meeting the following specifications for such bond:

The Attorney in fact signature on the Performance Bonds must be an original signature;

No time limit for the instituting of suit under the bond is to be mentioned in the bond;

Canton Drop Forge is the Obligee on the bond;

Date of Contract and purpose of Contract must be listed on the bond;

A Power of Attorney form (which form authorizes and appoints the Attorney-in-Fact) shall accompany the bond;

Any Notary Public, Certificate or Witnesses signature must be original signatures;

The amount of the Performance Bond, or a sum in excess of that amount, must appear on the Power of Attorney form, to show that this is the amount for which the Attorney-in-Fact is authorized to sign the bond. The bond shall be purchased through a surety company with a local agent upon whom service of process can be made.

In event of failure of surety or co-surety, the Contractor shall immediately furnish a new bond, as required herein. The Contractor's bond will not be released until all provisions of the contract have been fulfilled.

#### ONE-YEAR MAINTENANCE BOND

Contractor shall furnish to the Owner, upon completion of the work, a one-year Maintenance bond in the amount of the contract, for maintenance of or correction of deficiencies in the contractor's work. Contractor shall guarantee his work for the period of one year following completion of construction and acceptance of the project by the Owner.

#### LIABILITY INSURANCE

The Contractor shall carry comprehensive general liability and comprehensive automobile liability insurance in the minimum amount as stated in the attached specifications.

Should any part of the work covered by this contract involving work at the site of the project be sublet, the Contractor shall furnish satisfactory proof of insurance of the character and in the amounts deemed necessary and required by CDF to provide insurance protection which in the aggregate will be equal to that specified for the principal Contractor if no work were sublet, such insurance to be written in the name of the subcontractor to cover work to be performed by him and his employees.

The Contractor shall furnish CDF with satisfactory proof of carriage of the insurance required, and neither he nor any sub-contractor shall commence work until such proofs have been submitted and the insurance approved by CDF.

#### WORKERS' COMPENSATION

The Contractor shall submit to CDF, prior to commencing work, a copy of his Workers' Compensation certificates from the Industrial Commission of Ohio.

#### SIGNATURE OF BIDDERS

The firm, corporate, or individual name of the bidder must be signed by the bidder in the space provided for the signatures on the proposal blank. In the case of a corporation, the title of the officer signing must be stated and such officer must be thereunto duly authorized. In a case of partnership, the signature of at least one of the partners must follow the firm name, using the term "doing business as \_\_\_\_\_", or "Sole Owner". The bidder shall further state in his proposal the name and address of each person or corporation to which he proposes to sublet any portion of the work.

#### PERMITS

The Contractor shall, after approval in writing from CDF, take out all necessary permits from the state, county or other public authorities, and shall give all notices required by law as directed by CDF. The Contractor shall not contact any public agency or authority without written approval from CDF.

#### EXECUTION OF CONTRACT

The bidder to whom the contract may be awarded will be required to execute a written contract with approved sureties within ten (10) days from the date of the Notice of Award from CDF. In case he shall fail to do so, the bid security accompanying his proposal may thereupon be forfeited to and the amount thereof retained by CDF as liquidated damages for any expense or delay which may be incurred in making another letting for the performance of said work, and to indemnify said CDF for any loss which it may sustain by failure of the bidder to execute the contract and furnish bond as aforesaid, and the work may be readvertised or let to the next higher or next best bidder, as CDF may determine.

## TIME OF CONTRACT AWARD AND EXECUTION

Proposal for the performance of the work covered by this contract may be held by CDF for a period of sixty (60) days after the receipt of proposals and shall continue in full effect during that period and shall not be subject to withdrawal.

If no contract shall have been awarded within sixty (60) days from the receipt of proposals, any proposal may be withdrawn or nullified by the party or parties submitting the same, but in the absence of such action shall be deemed to be confirmed and extended in time and for as long as permitted by the proposers thereof.

## BIDDER'S AFFIDAVIT

Each bidder who is a foreign corporation, that is, a corporation not chartered in Ohio but licensed to do business in Ohio, is required to submit with his bid an affidavit duly executed by the President or General Manager of the corporation, stating in said affidavit that said foreign corporation has, in accordance with the provisions of the Ohio Revised Code, obtained a certificate authorizing it to do business in the State of Ohio. (These certificated or certified copies of them are obtainable from the Tax Commission of Ohio at Columbus).

## WITHDRAWAL OF PROPOSAL

Bids may be withdrawn at any time prior to the time for opening. No bidder may withdraw his bid for a period of sixty (60) days after the opening of bids.

## COMPETENCY OF BIDDER

No bid will be considered unless the bidder shall have furnished evidence satisfactory to CDF that he has the necessary facilities, ability and financial resources to fulfill the conditions of the contract.

## ASSIGNMENT

Assignment of this contract, or any part thereof or any funds to be received thereunder by the Contractor, will be subject to the approval of CDF. Any such assignment shall contain a clause to the effect that it is agreed that the funds to be paid the assignee under the assignment are subject to a prior lien in favor of all persons, firms, or corporations rendering services or supplying materials for the performance of the work called for in said contract.

## NONCOLLUSION AFFIDAVIT

All bidders will be required to submit a noncollusion affidavit, in the form included in the contract documents. This affidavit shall be dated and executed before the opening of bids.

## LAWS AND ORDINANCES

The U.S. Department of Labor "Safety and Health Regulations for Construction" identified as Chapter XVII of Title 29, Code of Federal Regulations (CFR), Part 1926 (formerly Part 1518) and subsequent amendments are hereby made a part of these specifications.

## CONFLICT IN MEANING

The Supplemental General Conditions shall supplement and/or modify the General Conditions included herein and shall govern whenever there is a conflict in meaning.

## PRECONSTRUCTION MEETING

There will be a preconstruction meeting and the successful bidder is required to schedule and attend.

## UNIT PRICES

The unit prices specified in the unit price column will govern the award of the contract. The bidder shall make the calculations in the amount bid column and also add up the total. However, the unit price specified, together with the estimated quantities, shall determine the total amount of the bid. If there is an error made in the extensions by the bidder, the total shall be changed as only the unit prices shall govern. Unit prices shall be used to determine differences or changes between estimated quantities and actual construction quantities.

**BID AND CONTRACT**

**FORMS**

**CANTON DROP FORGE**  
**Stark County, Ohio**  
**Proposal for**  
**BIOREMEDIATION**  
**Contract 95-2**

- NOTE 1: THE SIGNING OF THE BID REPRESENTS THE BIDDER'S ACCEPTANCE OF THE TERMS AND CONDITIONS OF THE INSTRUCTIONS TO BIDDERS AND THE SPECIFICATIONS AND PROVISIONS AND THAT THE BIDDER WILL ENTER INTO THE CONTRACT IF HE IS AWARDED THE BID AND WILL ENTER SAID CONTRACT WITHIN TEN (10) DAYS OF NOTICE OF AWARD. BID IS TO BE FIRM AND MAY NOT BE WITHDRAWN FOR A PERIOD OF SIXTY (60) CALENDAR DAYS.
- NOTE 2: THE BIDDER AGREES THAT CANTON DROP FORGE HAS THE RIGHT TO REJECT ANY OR ALL BIDS AND TO WAIVE INFORMALITY IN ANY BID AND THAT THE BIDDER SHALL NOT DISPUTE THE CORRECTNESS OF THE METHODS USED IN COMPUTING THE LOWEST RESPONSIBLE BIDDER.
- NOTE 3: ALL COSTS OF MAINTENANCE WORK DURING CONSTRUCTION AND BEFORE THE FINAL ACCEPTANCE IS MADE SHALL BE INCLUDED IN THE LUMP SUM PRICES BID ON THE VARIOUS BID ITEMS AND THE CONTRACTOR WILL NOT BE PAID AN ADDITIONAL AMOUNT FOR SUCH WORK.

TO: CANTON DROP FORGE  
4575 SOUTHWAY STREET S.W.  
P.O. BOX 44706  
CANTON, OHIO 44706

FROM: \_\_\_\_\_  
FIRM NAME  
\_\_\_\_\_  
\_\_\_\_\_  
ADDRESS  
\_\_\_\_\_  
\_\_\_\_\_  
TELEPHONE NO. \_\_\_\_\_

**Canton Drop Forge  
Ex-Situ Bioremediation - Lagoon #1**

April 1995

Item No	Item	Est'd Quantity	Unit	Separate Unit Prices (figures)		Combined Unit Prices (to be written in words)	Quantity Times Unit Total
				Mat'l	Labor	Mat'l-Labor-Unit-Total	Amount
1.1	Removal of materials lining Lagoon 1	3,000	c.y.				
1.2	Transportation of materials from Lagoon 1 to biocell(s)	3,000	c.y.				
1.3	Construction of biocell(s) for Lagoon 1 materials	Lump	Lump				
1.4	Treatability study of materials in Lagoon 1	Lump	Lump				
1.5	Bulking of materials from Lagoon 1 with on site materials if required*	1,000	c.y.				
1.6	Bulking of materials from Lagoon 1 with off site materials if required*	1,000	c.y.				
1.7	Inoculation of materials in Lagoon 1 biocell(s)**	3,000	c.y.				
1.8	Inoculation of Lagoon 1 lining after sludge removal	Lump	Lump				
1.9	Site visits	30	Ea.				

If the contractor does not expect the use of bulking material please indicate by using N/A

\* All items may not be required. Unit process will still be useful in the event that all items are required.

\*\* Inoculation costs shall be based on c.y. of material excavated from the Lagoon #1, not the bulked volume.

Sub-Total Lagoon No. 1 \$ \_\_\_\_\_

**Canton Drop Forge  
Ex-Situ Bioremediation - Lagoon #2**

April 1995

Item No	Item	Est'd Quantity	Unit	Separate Unit Prices (figures)		Combined Unit Prices (to be written in words)	Quantity Times Unit Total
				Mat'L	Labor	Mat'l-Labor-Unit-Total	Amount
2.1	Removal of materials lining Lagoon 2	6,000	c.y.				
2.2	Transportation of materials from Lagoon 2 to biocell(s)	6,000	c.y.				
2.3	Construction of biocell(s) for Lagoon 2 materials	Lump	Lump				
2.4	Treatability study of materials in Lagoon 2	Lump	Lump				
2.5	Bulking of materials from Lagoon 2 with on site materials if required*	6,000	c.y.				
2.6	Bulking of materials from Lagoon 2 with off site materials if required*	6,000	c.y.				
2.7	Inoculation of materials in Lagoon 2 biocell(s)**	6,000	c.y.				
2.8	Inoculation of Lagoon 2 lining after sludge removal	Lump	Lump				
2.9	Site visits	30	Ea.				

If the contractor does not expect the use of bulking material please indicate by using N/A

\* All items may not be required. Unit process will still be useful in the event that all items are required.

\*\* Inoculation costs shall be based on c.y. of material excavated from the Lagoon #2, not the bulked volume.

Sub-Total Lagoon No. 2 \$ \_\_\_\_\_

TOTAL AMOUNT OF BID

\_\_\_\_\_ (\$ \_\_\_\_\_)  
(Written Out)

The Contractor agrees to complete all of the work specified for this contract within five hundred forty-eight (548) calendar days (one and one half years) after the date of Notice to Proceed. The bid prices shall include all labor, materials, equipment, overhead, profit, insurance, etc., to cover the finished work. Should contamination still exceed target levels (TPH $\leq$ 380 ppm), after one and one half years, a meeting between CDF representatives and the contractor shall occur. Based on this meeting CDF will either:

1. Require that all contaminated material resulting from this project be excavated and moved off site for disposal (no further treatment) at a regulated landfill, at no cost to CDF.

OR

2. Allow the contractor six (6) additional months to achieve target levels at no cost to CDF. If after the six (6) month extension target levels have not been achieved, CDF may exercise Option 1. Should the landfilling option be exercised, the contractor must receive CDF approval of all proposed disposal activities prior to disposal. After disposal CDF shall receive documentation verifying proper disposal. If the Contractor does not submit an approved disposal plan within six (6) months of the formal decision to exercise Option 1, CDF may seek outside contractors to remove the TPH contaminated soil resulting from ex-situ bio-remediation attempts. If in-situ means are used, 3,000 c.y. from Lagoon #1 and 9,000 c.y. from Lagoon #2 shall be removed. CDF will bill the bio-remediation contractor for all disposal activities.

Bidder understands that Canton Drop Forge (CDF) reserves the right to reject any or all bids and waive any informalities in the bidding. The bidder agrees that this bid shall be good any may not be withdrawn for a period of 60 calendar days after the scheduled closing time for receiving bids.

Upon receipt of Notice of Award by CDF, bidder will execute the formal contract attached within 10 days and deliver a Surety Bond or Bonds as required. The bid security attached in the \_\_\_\_\_ form of \_\_\_\_\_ in the sum of \_\_\_\_\_ (\$ \_\_\_\_\_) is to become the property of CDF in the event the contract and bond are not executed within the time above set forth, as liquidated damages for the delay and additional expense to CDF caused thereby.

BIDDER acknowledges receipt of the following ADDENDUM:

Addendum No. \_\_\_\_\_, Dated \_\_\_\_\_

Addendum No. \_\_\_\_\_, Dated \_\_\_\_\_

Addendum No. \_\_\_\_\_, Dated \_\_\_\_\_

Addendum No. \_\_\_\_\_, Dated \_\_\_\_\_

**CANTON DROP FORGE  
ALTERNATE BID  
IN-SITU BIOREMEDIATION**

**IN-SITU BIOREMEDIATION - LAGOON #1**

Item 3.1 In-Situ Bioremediation of  
Lagoon #1. This shall  
consist of reducing the  
TPH contamination of \$ \_\_\_\_\_  
approximately 3,000 c.y. Lump  
of material to  $\leq 380$  ppm.

**IN-SITU BIOREMEDIATION - LAGOON #2**

Item 4.1 In-Situ Bioremediation of  
Lagoon #2. This shall  
consist of reducing the  
TPH contamination of \$ \_\_\_\_\_  
approximately 6,000 c.y. Lump  
of material to  $\leq 380$  ppm

\$ \_\_\_\_\_  
Total Cost

CANTON DROP FORGE  
Stark County, Ohio  
Proposal for  
BIOREMEDIATION  
Contract No. 95-2

CANTON DROP FORGE RESERVES THE RIGHT TO ACCEPT OR REJECT ANY AND ALL BIDS.  
THE BID WILL BE AWARDED TO THE LOWEST RESPONSIBLE BIDDER.

BID IS FIRM FOR SIXTY (60) DAYS.

ATTACHMENTS: BID GUARANTY BOND OR CONSENT OF SURETY FORM.  
NON-COLLUSION AFFIDAVIT

SIGNATURE CLAUSE:

IF A CORPORATION

\_\_\_\_\_  
NAME OF CORPORATION

SIGNATURE: \_\_\_\_\_  
PRESIDENT

SIGNATURE: \_\_\_\_\_  
SECRETARY

IF A PARTNERSHIP:  
(List All Partners)

\_\_\_\_\_  
NAME OF PARTNERSHIP

SIGNATURE: \_\_\_\_\_

SIGNATURE: \_\_\_\_\_

SIGNATURE: \_\_\_\_\_

IF AN INDIVIDUAL DOING BUSINESS  
UNDER THE FIRM NAME AND STYLE OF: \_\_\_\_\_

STATE OF OHIO

COUNTY OF \_\_\_\_\_ SIGNATURE: \_\_\_\_\_

SWORN TO AND SUBSCRIBED BEFORE ME THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 19\_\_\_\_.

\_\_\_\_\_  
NOTARY PUBLIC

## EXPERIENCE AND EQUIPMENT QUESTIONNAIRE

The signatory of this proposal guarantees the truth and accuracy of all statements and of all answers to interrogatories hereinafter made.

1. How many years have you been in business as a General Contractor under you present business name?
2. How many years have you been in principal officer of a general contracting firm under another name?
3. What projects of a similar nature has your organization completed?

(Note: Fill out each blank completely)

Name of Owner and Location	Name and Address of Person in Responsible Charge as Reference	Class of Work	Amount of Contract	Date of Completion

## EXPERIENCE AND EQUIPMENT QUESTIONNAIRE

Have you, or your Company, or any organization of which you have been a responsible officer or agent, ever failed to complete any work awarded to you? If so, where and why?

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The work awarded or to be awarded will have the personal supervision of whom?

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Explain approximately your plan and layout for performing the proposed work.

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## EXPERIENCE AND EQUIPMENT QUESTIONNAIRE

7. What equipment do you own that is available for the proposed work?

Quantity	Description Size, Capacity, Etc.	Condition	Years of Service

8. At what places are the principal items of the equipment located?

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**BID GUARANTY FORM 1**  
**BID GUARANTY BOND**

(Not to be filled out if a certified check is submitted)

KNOW ALL MEN BY THESE PRESENTS:

That we, the undersigned \_\_\_\_\_

(Name and Address of Contractor)

as Principal, hereinafter called Principal, and \_\_\_\_\_

\_\_\_\_\_  
(Name and Full Mailing Address of Surety)

as Surety, hereinafter called Surety, are hereby held and firmly bound unto Canton Drop Forge, as Obligee in the penal sum of the dollar amount of the bid submitted by the Principal to the Obligee on the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, to undertake the project known as the BIOREMEDIATION. The penal sum referred to herein shall be the dollar amount of the Principal's bid to the Obligee, incorporating any additive or deductive alternate proposals made by the Principal on the date referred to above to the Obligee, which are accepted by the Obligee. In no case shall the penal sum exceed the amount of one hundred (100) percent of the bid including any alternates which may be accepted. For the payment of the penal sum, well and truly to be made, we hereby jointly and severally bind ourselves, our heirs, executors, administrators, successors, and assigns.

THE CONDITION OF THE ABOVE OBLIGATION IS SUCH, that whereas the above named Principal has submitted a bid for the project.

NOW, THEREFORE, if the Obligee accepts the bid of the Principal and the Principal fails to enter into a proper contract in accordance with the bid, plans, details, specifications, and bills of material; and in the event the Principal pays to the Obligee the difference not to exceed ten (10) percent of the penalty hereof between the amount specified in the bid and such larger amount for which the Obligee may in good faith contract with the next lowest bidder to perform the work covered by the bid; or in the event the Obligee does not award the contract to the next lowest bidder and resubmits the project for bidding, the Principal pays to the Obligee the difference not to exceed ten (10) percent of the penalty hereof between the amount specified in the bid, or the costs, in connection with the resubmission, of printing new contract documents, required advertising, and printing and mailing notices to prospective bidders, whichever is less, then this obligation shall be null and void, otherwise to remain in full force and effect; if the Obligee accepts the bid of the Principal and the Principal within fifteen days after the awarding of the contract enters into a proper contract in accordance with the bid, plans, details, specifications, and bills of material, which said contract is made a part of this bond the same as though set forth herein:

NOW ALSO, if the said Principal shall well and faithfully do and perform the things agreed by the Principal to be done and performed according to the terms of said contract; and shall pay all lawful claims of subcontractors, materialmen, and laborers, for labor performed and materials furnished in the carrying forward, performing, or completing of said contract; we agreeing and assenting that this undertaking shall be for the benefit of any materialman or laborer having a just claim, as well as for the Obligee herein; then this obligation shall be void; otherwise the same shall remain in full force and effect; it being expressly understood and agreed that the liability of the surety for any and all claims hereunder shall in no event exceed the penal amount of this obligation as herein stated.

**BID GUARANTY BOND**

Page 2

The said Surety hereby stipulates and agrees that no modifications, omissions, or additions, in or to the terms of the said contract or in or to the plans or specifications therefore shall in any way affect the obligations of said Surety on its bond.

Signed this \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_.

IN WITNESS WHEREOF, the Principal and the Surety have hereunto set their hands and seals, and such of them as are corporations have caused their corporate seals to be hereto affixed and these presents to be signed by their proper officers, the day and year first set forth above.

\_\_\_\_\_  
Witness of Principal

PRINCIPAL: \_\_\_\_\_

By \_\_\_\_\_

Title: \_\_\_\_\_

SURETY: \_\_\_\_\_

\_\_\_\_\_  
Witness of Attorney-in-Fact

By \_\_\_\_\_

Attorney-in-Fact

\_\_\_\_\_  
(Full Mailing Address)

(Facsimile signatures are not acceptable)

(This Bond may be photocopied but not retyped)

**BID GUARANTY FORM 2**  
**CONSENT OF SURETY**

(To be completed only if certified check or cashier's check is used)

\_\_\_\_\_  
(Name of Surety Company)

\_\_\_\_\_  
(Address)

KNOW ALL THESE MEN BY THESE PRESENTS, that we \_\_\_\_\_  
(Name of Bidder)  
as Principal and \_\_\_\_\_ a corporation created and existing  
(Name of Surety Company)  
under the Laws of the State of \_\_\_\_\_, and having its principal office at  
\_\_\_\_\_ are held firmly bound unto the

(Complete Address of Surety Company)

Canton Drop Forge hereby jointly and severally and binding our heirs, successors, administrators, executors, legal representatives and assigns by these presents.

THE CONDITIONS OF THIS OBLIGATION are such that whereas the above named Principal submits the herewith proposal for construction of the BIOREMEDIATION, CANTON DROP FORGE in conformance with the Information and Instructions to Bidders, we the above named Surety, will meet all the stipulations and will execute the Surety Bond as hereinafter, to the above named Principal in event he should be awarded a contract and in amount one hundred percent (100%) of the total bid price for performing the work and guaranteeing its performance in conformity with the plans and specifications to Canton Drop Forge.

WITNESS OUR SIGNATURES, this \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_\_.

ATTEST:

\_\_\_\_\_  
Witness

\_\_\_\_\_  
(Contractor - Principal)

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Seal

ATTEST:

\_\_\_\_\_  
Witness

\_\_\_\_\_  
(Title)

\_\_\_\_\_  
(Name of Surety Company)

\_\_\_\_\_  
(Signature)

## NON-COLLUSION AFFIDAVIT

This affidavit is to be filled out and executed by the bidder. If the bid is made by a corporation, then by its properly authorized agent.

The name of the individual swearing to the affidavit should always appear on the line marked "Name of Affiant". The affiant should sign his/her name at end, not a partnership nor corporation name, and swear to said affidavit before a Notary Public, who must attach his seal.

STATE OF OHIO, COUNTY OF \_\_\_\_\_, SS.

BIOREMEDIATION, CANTON DROP FORGE

\_\_\_\_\_ being duly sworn, deposes and says that he is  
(Name of Affiant)

\_\_\_\_\_ of  
(sole owner, partner, president, secretary, etc.)

\_\_\_\_\_ residing

\_\_\_\_\_ and that

\_\_\_\_\_  
(person, firms, corporations interested in the bid)

is or are the only persons interested in the profits of any contract which may result from herein contained proposal; that the said proposal is made without any connection or interests in the profit thereof with any other person making any other bid or proposal for said work; that the said proposal is in all respects fair, and without collusion or fraud; and also that no member of Canton Drop Forge, head of any department or bureau of employee therein, or any officer of Canton Drop Forge, is directly or indirectly interested therein; and that all the statements made by him in this proposal are true.

Signed: \_\_\_\_\_ Title: \_\_\_\_\_  
Affiant

Subscribed and sworn before me this \_\_\_\_\_ day of \_\_\_\_\_ 19 \_\_\_\_\_

\_\_\_\_\_ Notary Public

## NOTICE OF AWARD

To: \_\_\_\_\_

Address: \_\_\_\_\_

### BIOREMEDIATION, CANTON DROP FORGE

Canton Drop Forge has considered the bid submitted by you on \_\_\_\_\_ 1995, for the above mentioned work in response to its advertisement for bids.

You are hereby notified that your bid in the amount of \$ \_\_\_\_\_ has been accepted.

You are required by the Information and Instructions to Bidders to execute the contract and furnish the required delinquent personal property tax affidavit, performance bond, certificate of insurance and a copy of your current Workmen's Compensation Certificate within 10 calendar days from the date of this notice,

If you fail to comply with the above requirements, Canton Drop Forge will be entitled to consider all of your rights arising out of the CDF's acceptance of your bid as abandoned and as a forfeiture of your bid guaranty subject to the liability as set forth in Section 153.54 of the Ohio Revised Code. Canton Drop Forge will be entitled to such other rights as may be granted by law.

You are required to return an acknowledged copy of this Notice of Award to Canton Drop Forge.

Date this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

Canton Drop Forge

By: \_\_\_\_\_  
Chairman

Acceptance of Notice:

Receipt of the above Notice of Award is hereby acknowledged by \_\_\_\_\_

\_\_\_\_\_ this the \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_.

Signature and Title: \_\_\_\_\_

AGREEMENT  
CONTRACT 95-2

For BIOREMEDIATION, CANTON DROP FORGE, CANTON, OHIO.

THIS AGREEMENT, made and entered into at \_\_\_\_\_, Ohio, this \_\_\_\_\_ day of \_\_\_\_\_, 1995, by and between Canton Drop Forge (CDF), hereinafter called CDF, and a corporation, partnership, individual or \_\_\_\_\_ known as \_\_\_\_\_, with an office located at \_\_\_\_\_ hereinafter called the "CONTRACTOR".

WITNESSETH

That the CONTRACTOR has agreed and by these presents does agree that the CONTRACTOR, for the consideration of \$\_\_\_\_\_ paid by CDF hereinbefore mentioned and contained in the proposal, and under penalty expressed in a bond bearing even date with these presents, and herein contained or hereunto annexed to furnish at his own cost and expense, all the necessary materials, labor, superintendence, tools and equipment, and shall execute, construct, finish and test in an expeditious, substantial and workmanlike manner, said improvements shown on the contract drawings described in the included specification or required by CDF, with all equipment and appurtenances, commencing work within (10) days from the date of notice from CDF to commence work and executing the same within the time and in the manner specified and in conformity with the requirements set forth in the specification herein contained or hereunto attached in accordance with the contract drawings of said work on file in the office of CDF and all to the acceptance of said CDF. X

The project will consist of removing the sludges lining Lagoon #1 and Lagoon #2 and using ex-situ bio-remediation technology to reduce Total Petroleum Hydrocarbon (TPH) contamination levels of the excavated materials to below the target level of 380 ppm.

The estimated removal quantities are 3,000 c.y. from Lagoon #1 and 6,000 c.y. from Lagoon #2. During excavation the contractor shall maintain quantity estimates and keep CDF informed of the quantity removed. If it appears that material beyond the estimated quantity will require removal, the contractor shall immediately contact CDF representatives. CDF may halt removal prior to reaching the estimated quantities or request the removal of material beyond the estimated quantities. Payment will be based on the actual quantity of material removed and the unit prices. Tasks related to the bioremediation project include, but are not limited to, excavation of lagoon linings, transport of excavated materials to the on-site treatment areas, treatability studies, bio-cell design, bio-cell construction, bulking of excavated materials to enhance bioremediation, inoculation of materials to be treated and maintenance of biocell(s). X

Once excavation of the lagoon materials is complete the contractor shall immediately "seed" the lagoon lining and walls prior to putting the lagoon back into service.

The contractor shall also estimate the type and number of samples for laboratory analysis that shall be retrieved by an independent agent. X

The CONTRACTOR shall proceed with the said work in a prompt and diligent manner and shall do the several parts thereof at such times and in such order as the Engineer or his duly authorized agent may direct. Further, he shall complete the whole of said work in accordance with the specifications and contract drawings to the satisfaction of CDF and their Engineer.

If the CONTRACTOR shall fail to comply with any of the terms, conditions, provisions, or stipulations of this contract according to the true intent and meaning thereof, then CDF may avail itself of any or all remedies provided in that behalf in the contract, and shall have the right and power to proceed in accordance with provisions thereof.

It is hereby agreed by the parties to this Agreement that the provisions contained in the "Invitation for Bids", in the "Information and Instructions to Bidders", in the "Proposal and Bid Form", in the "Insurance Specifications", in the "Performance Bond", in the "General Conditions", in the "Supplemental General Conditions", and in the Lab Reports for the improvement, shall constitute integral parts of the agreement and collectively that they shall comprise and be known as the Agreement. It is hereby mutually agreed that CDF is to pay and the CONTRACTOR is to receive, a full compensation for furnishing all materials and labor in building, constructing, and in all respects completing the herein described work and appurtenances in the manner and under the conditions herein specified, the prices stipulated in the proposal herein contained or hereto annexed.

The CONTRACTOR agrees not to discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.

Subject to the applicable provisions of law, this Agreement shall be in full force and effect as a contract from and after the date when a fully executed and approved counterpart hereof is delivered to the CONTRACTOR.

IN WITNESS WHEREOF, the parties hereunto affixed their signatures, the day and year first above mentioned.

CONTRACTOR

Witness: \_\_\_\_\_

By: \_\_\_\_\_

Date: \_\_\_\_\_

Title: \_\_\_\_\_

CANTON DROP FORGE

Attest: \_\_\_\_\_

By: \_\_\_\_\_

Date: \_\_\_\_\_

## PERFORMANCE BOND

KNOW ALL MEN BY THESE PRESENTS, that we, the undersigned \_\_\_\_\_

as Principal and \_\_\_\_\_, as Sureties, are hereby held and

firmly bound unto Canton Drop Forge (CDF), in the penal sum of \_\_\_\_\_

Dollars (\$ \_\_\_\_\_), for the payment of which, well and truly to be made, we hereby jointly and severally bind ourselves, our heirs, executors, administrators, successors, and assigns.

THE CONDITION OF THE ABOVE OBLIGATION IS SUCH, that whereas the above named Principal did

on the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, enter into a contract with CDF for the BIOREMEDIATION, CDF which said contract is made a part of this bond the same as though set forth herein;

Now, if the said Principal, \_\_\_\_\_, shall well and faithfully do and perform the things agreed by the Principal to be done and performed according to the terms of said contract; and shall pay all lawful claims of subcontractors, materialmen, and laborers, for labor performed and materials furnished in the carrying forward, performing, or completing of said contract; we agreeing and assenting that this undertaking shall be for the benefit of any materialman or laborer having a just claim, as well as for the Obligee herein; then this obligation shall be void; otherwise the same shall remain in full force and effect; it being expressly understood and agreed that the liability of the Surety for any and all claims hereunder shall in no event exceed the penal amount of this obligation as herein stated.

The said Surety hereby stipulates and agrees that no modifications, omissions, or additions, in or to the terms of said contract or in or to the plans or specifications thereof shall in any way affect the obligations of said Surety on its bond.

PROVIDE FURTHER, that no final settlement between CDF and the Contractor shall abridge the right of any beneficiary hereunder, whose claim may be unsatisfied.

Signed this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

PRINCIPAL: \_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

SURETY: \_\_\_\_\_

By: \_\_\_\_\_

Attorney-in-Fact  
(Must be in Ohio)

\_\_\_\_\_  
Witness of Principal

\_\_\_\_\_  
Witness of Attorney-in-Fact

(Facsimile signatures are not acceptable)

## LABOR AND MATERIALMEN'S BOND

KNOW ALL MEN BY THESE PRESENTS, That we, \_\_\_\_\_, as Principal, and \_\_\_\_\_, as Surety, are held and firmly bound unto Canton Drop Forge (CDF), (hereinafter called the Obligee) in the penal sum of \_\_\_\_\_ (\$ \_\_\_\_\_) lawful money of the United States, for the payment of which sum well and truly to be made we bind ourselves, our heirs, personal representatives, successors, and assigns, jointly and severally, firmly by these presents:

WHEREAS, said Principal has entered into a certain contract with said Obligee, dated \_\_\_\_\_, 1995, (hereinafter called the Contract) for the BIOREMEDIATION which contract and the specifications for said work shall be deemed a part hereof as fully as if set out herein.

NOW, THEREFORE, THE CONDITIONS OF THE OBLIGATION ARE SUCH that if said Principal and all subcontractors to whom any portion of the work provided for in said contract is sublet and all assignees of said Principal of such subcontractors, shall promptly make payment for all labor performed, services rendered, and materials furnished in the prosecution of the work provided for in said contract, or in any amendment or extension of, or addition to said contract, then the above obligation shall be void; otherwise to remain in full force and effect. PROVIDED, however, that this bond is subject to the following conditions and limitations.

- a. All persons who have performed labor, rendered services, or furnished materials or machinery as aforesaid, shall have a direct right of action against the Principal and Surety on this bond, which right of action shall be asserted in proceedings instituted in the State in which such labor was performed, services rendered or materials furnished under said contract in more than one State, then in any such States). Insofar as shall be asserted in a proceeding instituted in the name of the Obligee to the use and benefit of the person instituting such action and of all other persons having claims hereunder, and any other person having a claim hereunder, shall have the right to be made a party of such proceeding (but not later than one (1) year after the complete performance of said Contract and final settlement thereof) and to have such claim adjudicated in such action and judgment rendered thereon.
- b. The surety shall not be liable hereunder for any damages or compensation recoverable under any workers' compensation or employer's liability statute.

## LABOR AND MATERIALMEN'S BOND

- c. In no event shall the Surety be liable for a greater sum than the penalty of this bond, or subject to any suit, action or proceeding thereon that is instituted later than one year after the complete performance of said Contract and final settlement thereof.
- d. As used herein, the term "person" refers to any person, firm, or corporation who has furnished materials or machinery to be used on or incorporated in the work or the prosecution thereof provided for in said contract or in any amendment or extension of or addition to said contract, and/or to any person engaged in the prosecution of the work provided for in said contract, or any amendment or extension of or addition to said contract, who is an agent, servant or employee of the Principal, or of any subcontractor, or of any assignee of said Principal, or of any subcontractor, and also anyone so engaged who performs the work of laborer or of a mechanic regardless of any contractual relationship between the principal of any subcontractor, or any assignee of said principal or of said Contractor, and such laborer or mechanic, but shall not include office employees not regularly stationed at the site of the work.

The said Surety, for value received, hereby stipulates and agrees that no charge, extension of time, alteration or addition to the terms of this contract or to the work to be performed thereunder or the specification accompanying the same, shall in any way effect its obligations on this bond and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the contract or to the work or to the specifications.

**LABOR AND MATERIALMEN'S BOND**

SIGNED, SEALED AND DELIVERED IN TRIPLICATE THIS day of \_\_\_\_\_ day of \_\_\_\_\_, 1995.

**INDIVIDUAL PRINCIPALS SIGN HERE**

In the presence of:

_____	_____ (Seal)
_____	_____ (Seal)
_____	_____ (Seal)
_____	_____ (Seal)

**(Corporate Principals sign here)**

Attest: \_\_\_\_\_  
\_\_\_\_\_ By: \_\_\_\_\_

**(Surety Sign Here)**

Attest: \_\_\_\_\_  
\_\_\_\_\_ By: \_\_\_\_\_

Approved this \_\_\_\_\_ day of \_\_\_\_\_, 1995.

By: \_\_\_\_\_  
Obligee Attorney-in-fact

## **LABOR AND MATERIALMEN'S BOND**

### **INSTRUCTIONS**

1. The full Christian name and residence of each individual party of the bond must be inserted in the first paragraph.
2. If the principal is a partnership, the full names of all partners must be inserted in the first paragraph which must recite they are the partners composing the partnership (to be named) and all partners must execute the bond as individuals.
3. The State of incorporation of each corporate party to the bond must be inserted in the first paragraph and bond must be executed under the corporate seal of said party attested by its secretary or other appropriate officer.
4. The date of the bond must not be prior to the date of the contract.
5. Attorney-in-Fact must be in Ohio.

## GENERAL CONDITIONS

## GENERAL CONDITIONS

### ARTICLE 1 - DEFINITIONS

Wherever used in these General Conditions or in the other Contract Documents the following terms have the meanings indicated which are applicable to both the singular and plural thereof:

1.1 Addenda: Written or graphic instruments issued prior to the opening of Bids which clarify, correct or change the Bidding Requirements or the Contract Documents.

1.2 Agreement: The written contract between OWNER and CONTRACTOR covering the Work to be performed; other Contract Documents are attached to the Agreement and made a part thereof as provided therein.

1.3 Application for Payment: The form accepted by ENGINEER which is to be used by CONTRACTOR in requesting progress of final payments and which is to be accompanied by such supporting documentation as is required by the Contract Documents.

1.4 Asbestos: Any material that contains more than one percent asbestos and is friable or is releasing asbestos fibers into the air above current action levels established by the United State Occupational Safety and Health Administration.

1.5 Bid: The offer or proposal of the bidder submitted on the prescribed form setting forth the prices for the Work to be performed.

1.6 Bidding Documents: The advertisement or invitation to Bid, instructions to bidders, the Bid form, and the proposed Contract Documents (including all Addenda issued prior to receipt of Bids).

1.7 Bidding Requirements: The advertisement or invitation to Bid, instructions to bidders, and the Bid form.

1.8 Bonds: Performance and Payment bonds and other instruments of security.

1.9 Change Order: A document recommended by ENGINEER, which is signed by CONTRACTOR and OWNER and authorizes an addition, deletion or revision in the Work, or an adjustment in the Contract Price or the Contract Times, issued on or after the Effective Date of the Agreement.

1.10 Contract Documents: The Agreement, Addenda (which pertain to the Contract Documents), CONTRACTOR's Bid (including documentation accompanying the Bid and any post Bid documentation submitted prior to the Notice of Award) when attached as an exhibit to the Agreement, the Notice to Proceed, the Bonds, these General Conditions, the Supplementary General Conditions, the Specifications and the Drawings as the same are more specifically identified in the Agreement, together with all Written Amendments, Change Orders, Work Change Directives, Field Orders and ENGINEER's written interpretations and clarifications issued pursuant to paragraphs 3.5, 3.6.1, and 3.6.3 on or after the Effective Date of the Agreement. Shop Drawings submittals approved pursuant to paragraphs 6.26 and 6.27 and the reports and drawings referred to in paragraphs 4.2.1.1 and 4.2.2.2 are not Contract Documents.

1.11. Contract Price: The moneys payable by OWNER to CONTRACTOR for completion of the Work in accordance with the Contract Documents as stated in the Agreement (subject to the provisions of paragraph 11.9.1 in the case of Unit Price Work).

1.12. Contract Times: The numbers of days or the dates stated in the Agreement: (i) to achieve Substantial Completion, and (ii) to complete the Work so that it is ready for final payment as evidenced by ENGINEER's written recommendation of final payment in accordance with paragraph 14.13.

1.13. CONTRACTOR: The person, firm or corporation with whom OWNER has entered into the Agreement.

1.14. Defective: An adjective which when modifying the word Work refers to Work that is unsatisfactory, faulty or deficient, in that it does not conform to the Contract Documents, or does not meet the requirements of any inspection, reference standard, test or approval referred to in the Contract Documents, or has been damaged prior to ENGINEER's recommendation of final payment (unless responsibility for the protection thereof has been assumed by OWNER at Substantial Completion in accordance with paragraph 14.8 or 14.10).

1.15. Drawings: The drawings which show the scope, extent and character of the Work to be furnished and performed by CONTRACTOR and which have been prepared or approved by ENGINEER and are referred to in the Contract Documents. Shop drawings are not Drawings as so defined.

1.16. Effective Date of the Agreement: The date indicated in the Agreement on which it becomes effective, but if no such date is indicated it means the date on which the Agreement is signed and delivered by the last of the two parties to sign and deliver.

1.17. ENGINEER: The person, firm or corporation named as such in the Agreement. Lawrence D. Phillips, P.E., Hammontree & Associates, Limited.

1.18. ENGINEER's Consultant: A person, firm or corporation having a contract with ENGINEER to furnish services as ENGINEER's independent professional associate or consultant with respect to the Project and who is identified as such in the Supplementary Conditions.

1.19. Field Order: A written order issued by ENGINEER which orders minor changes in the Work in accordance with paragraph 9.5 but which does not involve a change in the Contract Price or the Contract Times.

1.20. General Requirements - Sections of Division 1 of the Specifications.

1.21. Hazardous Waste - The term Hazardous Waste shall have the meaning provided in Section 1004 of the Solid Waste Disposal Act (42 USC Section 6903) as amended from time to time.

1.22. Laws and Regulations; Laws or Regulations - Any and all applicable laws, rules, regulations, ordinances, codes and orders of any and all governmental bodies, agencies, authorities and courts having jurisdiction.

1.23. Liens - Liens, charges, security interests or encumbrances upon real property or personal property.

1.24. Milestone - a principal event specified in the Contract Documents relating to an intermediate completion date or time prior to Substantial Completion of all the Work.

1.25. Notice of Award - The written notice by OWNER to the apparent successful bidder stating that upon compliance by the apparent successful bidder with the conditions precedent enumerated therein, within the time specified, OWNER will sign and deliver the Agreement.

1.26. Notice to Proceed - A written notice given by OWNER to CONTRACTOR (with a copy to ENGINEER) fixing the date on which the Contract Times will commence to run and on which CONTRACTOR shall start to perform CONTRACTOR's obligations under the Contract Documents.

1.27. OWNER - CDF with whom CONTRACTOR has entered into the Agreement and for whom the Work is to be provided.

1.28. Partial Utilization - Use by OWNER of a substantially completed part of the Work for the purpose for which it is intended (or a related purpose) prior to Substantial Completion of all the Work.

1.29. PCBs - Polychlorinated biphenyls.

1.30. Petroleum - Petroleum, including crude oil or any fraction thereof which is liquid at standard conditions of temperature and pressure (60 degrees Fahrenheit and 14.7 pounds per square inch absolute), such as oil, petroleum, fuel oil, oil sludge, oil refuse, gasoline, kerosene, and oil mixed with other non-Hazardous Wastes and crude oils.

1.31. Project - The total construction of which the Work to be provided under the Contract Documents may be the whole, or a part as indicated elsewhere in the Contract Documents.

1.32. Radioactive Material - Source, special nuclear, or byproduct material as defined by the Atomic Energy Act of 1954 (42 USC Section 2011 et seq.) as amended from time to time.

1.33. Resident Project Representative - The authorized representative of ENGINEER who may be assigned to the site or any part thereof.

1.34. Samples - Physical examples of materials, equipment, or workmanship that are representative of some portion of the Work and which establish the standards by which such portion of the Work will be judged.

1.35. Shop Drawings - All drawings, diagrams, illustrations, schedules and other data or information which are specifically prepared or assembled by or for CONTRACTOR and submitted by CONTRACTOR to illustrate some portion of the Work.

1.36. Specifications - Those portions of the Contract Documents consisting of written technical descriptions of materials, equipment, construction systems, standards and workmanship as applied to the Work and certain administrative details applicable thereto.

1.37. Subcontractor - An individual, firm or corporation having a direct contract with CONTRACTOR or with any other Subcontractor for the performance of a part of the Work at the site.

1.38. Substantial Completion - The Work (or a specified part thereof) has progressed to the point where, in the opinion of ENGINEER as evidenced by ENGINEER's definitive certificate of Substantial Completion, it is sufficiently complete, in accordance with the Contract Documents, so that the Work (or specified part) can be utilized for the purposes for which it is intended; or if no such certificate is issued, when the Work is complete and ready for final payment as evidenced by ENGINEER's written recommendation of final payment in accordance with paragraph

14.13. The terms "substantially complete" and "substantially completed" as applied to all or part of the Work refer to Substantial Completion thereof.

1.39. Supplementary General Conditions - The part of the Contract Documents which amends or supplements these General Conditions.

1.40. Supplier - A manufacturer, fabricator, supplier, distributor, materialman, or vendor having a direct contract with CONTRACTOR or with any Subcontractor to furnish materials or equipment to be incorporated in the Work by CONTRACTOR or any Subcontractor.

1.41. Underground Facilities - All pipelines, conduits, ducts, cables, wires, manholes, vaults, tanks, tunnels or other such facilities or attachments, and any encasements containing such facilities which have been installed underground to furnish any of the following services or materials: electricity, gases, steam, liquid petroleum products, telephone or other communications, cable television, sewage and drainage removal, traffic or other control systems or water.

1.42. Left blank intentionally

1.43. Work - The entire completed construction or the various separately identifiable parts thereof required to be furnished under the Contract Documents. Work includes and is the result of performing or furnishing labor and furnishing and incorporating materials and equipment into the construction, and performing or furnishing services and furnishing documents, all as required by the Contract Documents.

The project will consist of removing the sludges lining Lagoon #1 and Lagoon #2 and using ex-situ bio-remediation technology to reduce Total Petroleum Hydrocarbon (TPH) contamination levels of the excavated materials to below the target level of 380 ppm.

The estimated removal quantities are 3,000 c.y. from Lagoon #1 and 6,000 c.y. from Lagoon #2. During excavation the contractor shall maintain quantity estimates and keep CDF informed of the quantity removed. If it appears that material beyond the estimated quantity will require removal, the contractor shall immediately contact CDF representatives. CDF may halt removal prior to reaching the estimated quantities or request the removal of material beyond the estimated quantities. Payment will be based on the actual quantity of material removed and the unit prices. Tasks related to the bioremediation project include, but are not limited to, excavation of lagoon linings, transport of excavated materials to the on-site treatment areas, treatability studies, bio-cell design, bio-cell construction, bulking of excavated materials to enhance bioremediation, inoculation of materials to be treated and maintenance of biocell(s).

Once excavation of the lagoon materials is complete the contractor shall immediately "seed" the lagoon lining and walls prior to putting the lagoon back into service.

The contractor shall also estimate the type and number of samples for laboratory analysis that shall be retrieved by an independent agent.

1.44. Work Change Directive - A written directive to CONTRACTOR, issued on or after the Effective Date of the Agreement and signed by OWNER and recommended by ENGINEER, ordering an addition, deletion or revision in the Work, or responding to differing or unforeseen physical conditions under which the Work is to be performed as provided in paragraph 4.2 or 4.3 or to emergencies under paragraph 6.23. A Work Change Directive will not change the Contract Price or the Contract Times, but is evidence that the parties expect that the change directed or documented by a Work Change Directive will be incorporated in a subsequently issued Change Order following negotiations by the parties as to its effect, if any, on the Contract Price or Contract Times as provided in paragraph 10.2.

1.45. Written Amendment - A written amendment of the Contract Documents, signed by OWNER and CONTRACTOR on or after the Effective Date of the Agreement and normally dealing with the nonengineering or nontechnical rather than strictly construction-related aspects of the Contract Documents.

## ARTICLE 2 - PRELIMINARY MATTERS

### Delivery of Bonds:

2.1 When CONTRACTOR delivers the executed Agreements to OWNER, CONTRACTOR shall also deliver to OWNER such Bonds as CONTRACTOR may be required to furnish in accordance with paragraph 5.1.

### Copies of Documents:

2.2 OWNER shall furnish to CONTRACTOR up to ten copies (unless otherwise specified in the Supplementary Conditions) of the Contract Documents as are reasonably necessary for the execution of the Work. Additional copies will be furnished, upon request, at the cost of reproduction.

### Commencement of Contract Times; Notice to Proceed:

2.3. The Contract Times will commence to run on the thirtieth day after the Effective Date of the Agreement, or, if a Notice to Proceed is given, on the day indicated in the Notice to Proceed. A Notice to Proceed may be given at any time within thirty days after the Effective Date of Agreement. In no event will the Contract Times commence to run later than the sixtieth day after the day of Bid opening or the thirtieth day after the Effective Date of the Agreement, whichever date is earlier.

### Starting the Work:

2.4. CONTRACTOR shall start to perform the Work on the date when the Contract Times commence to run, but no Work shall be done at the site prior to the date on which the Contract Times commence to run.

### Before Starting Construction:

2.5. Before undertaking each part of the Work, CONTRACTOR shall carefully study and compare the Contract Documents and check and verify pertinent figures shown thereon and all applicable field measurements. CONTRACTOR shall promptly report in writing to ENGINEER any conflict, error, ambiguity or discrepancy with CONTRACTOR may discover and shall obtain a written interpretation or clarification from ENGINEER before proceeding with any Work affected thereby; however, CONTRACTOR shall not be liable to OWNER or ENGINEER for failure to report any conflict, error, ambiguity or discrepancy in the Contract Documents, unless CONTRACTOR knew or reasonably should have known thereof. \*

2.6. Within ten days after the Effective Date of the Agreement (unless otherwise specified in the General Requirements), CONTRACTOR shall submit to ENGINEER for review:

2.6.1. A preliminary progress schedule indicating the times (numbers of days or dates) for starting and completing the various stages of the Work, including any Milestones specified in the Contract Documents;

2.6.2. A preliminary schedule of Shop Drawings and Sample submittals which will list each required submittal and the times for submitting, reviewing and processing such submittal;

2.6.3. A preliminary schedule of values for all of the Work which will include quantities and prices of items aggregating the Contract Price and will subdivide the Work into component parts in sufficient detail to serve as the basis for progress payments during construction. Such prices will include an appropriate amount of overhead and profit applicable to each item of Work.

2.7. Before any Work at the site is started, CONTRACTOR and OWNER shall each deliver to the other, with copies to each additional insured identified in the Supplementary Conditions, certificates of insurance (and other evidence of insurance which either of them or any additional insured may reasonably request) which CONTRACTOR and OWNER respectively are required to purchase and maintain in accordance with paragraphs 5.4, 5.6, and 5.7.

#### **Preconstruction Conference:**

2.8. Within twenty days after the Contract Times start to run, but before any Work at the site is started, a conference attended by CONTRACTOR, ENGINEER and others as appropriate will be held to establish a working understanding among the parties as to the Work and to discuss the schedules referred to in paragraph 2.6, procedures for handling Shop Drawings and other submittals, processing Applications for Payment and maintaining required records.

#### **Initially Acceptable Schedules:**

2.9. Unless otherwise provided in the Contract Documents, at least ten days before submission of the first Application for Payment a conference attended by CONTRACTOR, ENGINEER and others as appropriate will be held to review for acceptability to ENGINEER as provided below the schedules submitted in accordance with paragraph 2.6. CONTRACTOR shall have an additional ten days to make corrections and adjustments and to complete and resubmit the schedules. No progress payment shall be made to CONTRACTOR until the schedules are submitted to and acceptable to ENGINEER as provided below. The progress schedule will be acceptable to ENGINEER as providing an orderly progression of the Work to completion within any specified Milestones and the Contract Times, but such acceptance will neither impose on ENGINEER responsibility for the sequencing, scheduling or progress of the Work nor interfere with or relieve CONTRACTOR from CONTRACTOR's full responsibility therefor. CONTRACTOR's

schedule of Shop Drawing and Sample submissions will be acceptable to ENGINEER as providing a workable arrangement for reviewing and processing the required submittals. CONTRACTOR's schedule of values will be acceptable to ENGINEER as to form and substance.

## ARTICLE 3 - CONTRACT DOCUMENTS: INTENT, AMENDING, REUSE

### Intent:

3.1 The Contract Documents comprise the entire agreement between OWNER and CONTRACTOR concerning the Work. The Contract Documents are complementary; what is called for by one is as binding as if called for by all. The Contract Documents will be construed in accordance with the law of the place of the Project.

3.2. It is the intent of the Contract Documents to describe a functionally complete Project (or part thereof) to be constructed in accordance with the Contract Documents. Any Work, materials or equipment that may reasonably be inferred from the Contract Documents or from prevailing custom or trade usage as being required to produce the intended result will be furnished and performed whether or not specifically called for. When words or phrases which have a well-known technical or construction industry or trade meaning are used to describe Work, materials or equipment, such words or phrases shall be interpreted in accordance with that meaning. Clarifications and interpretations of the Contract Documents shall be issued by ENGINEER as provided in paragraph 9.4.

### 3.3. Reference to Standards and Specification of Technical Societies; Reporting and Resolving Discrepancies:

3.3.1. Reference to standards, specifications, manuals or codes of any technical society, organization or association, or to the Laws or Regulations of any governmental authority, whether such reference be specific or by implication, shall mean the latest standard, specification, manual, code or Laws or Regulations in effect at the time of opening of Bids (or, on the Effective Date of the Agreement if there were no Bids), except as may be otherwise specifically stated in the Contract Documents.

3.3.2. If, during the performance of the Work, CONTRACTOR discovers any conflict, error, ambiguity or discrepancy within the Contract Documents or between the Contract Documents and any provisions of any such Law or Regulation applicable to the performance of the Work or of any such standard, specification, manual or code or of any instruction of any Supplier referred to in paragraph 6.5, CONTRACTOR shall report it to ENGINEER in writing at once, and, CONTRACTOR shall not proceed with the Work affected thereby (except in an emergency as authorized by paragraph 6.23) until an amendment or supplement to the Contract Documents has been issued by one of the methods indicated in paragraph 3.5 or 3.6; provided, however, that CONTRACTOR shall not be liable to OWNER or ENGINEER for failure to report any such conflict, error, ambiguity or discrepancy unless CONTRACTOR knew or reasonably should have known thereof

3.3.3. Except as otherwise specifically stated in the Contract Documents or as may be provided by amendment or supplement thereto issued by one of the methods indicated in paragraph 3.5 or 3.6, the provisions of the Contract Documents shall take precedence in resolving any conflict, error, ambiguity or discrepancy between the provisions of the Contract Documents and:

3.3.3.1. the provisions of any such standard, specification, manual, code or instruction (whether or not specifically incorporated by reference in the Contract Documents); or

3.3.3.2. the provisions of any such Laws or Regulations applicable to the performance of the Work (unless such an interpretation of the provisions of the Contract Documents would result in violation of such Laws or Regulations).

No provisions of any such standard, specification, manual, code or instruction shall be effective to change the duties and responsibilities of OWNER, CONTRACTOR, or ENGINEER, or any of their subcontractors, consultants, agents, or employees from those set forth in the Contract Documents, nor shall it be effective to assign to OWNER, ENGINEER or any of ENGINEER's Consultants, agents or employees any duty or authority to supervise or direct the furnishing or performance of the Work or any duty or authority to undertake responsibility inconsistent with the provisions of paragraph 9.13 or any other provision of the Contract Documents.

3.4. Whenever in the Contract Documents the terms "as ordered," "as directed," "as required," "as allowed," "as approved" or terms of like effect or import are used, or the adjectives "reasonable," "suitable," "acceptable," "proper" or "satisfactory" or adjectives of like effect or import are used to describe a requirement, direction, review or judgment of ENGINEER as to the Work, it is intended that such requirement, direction, review or judgment will be solely to evaluate, in general, the completed Work for compliance with the requirements of and information in the Contract Documents and conformance with the design concept of the completed Project as a functioning whole as shown or indicated in the Contract Documents (unless there is a specific statement indicating otherwise). The use of any such term or adjective shall not be effective to assign to ENGINEER any duty or authority to supervise or direct the furnishing or performance of the Work or any duty or authority to undertake responsibility contrary to the provisions of paragraph 9.13 or any other provision of the Contract Documents.

### **Amending and Supplementing Contract Documents:**

3.5. The Contract Documents may be amended to provide for additions, deletions, and revisions in the Work or to modify the terms and conditions thereof in one or more of the following ways:

- 3.5.1. a formal Written Amendment,
- 3.5.2. a Change Order (pursuant to paragraph 10.4), or
- 3.5.3. a Work Change Directive (pursuant to paragraph 10.1).

3.6. In addition, the requirements of the Contract Documents may be supplemented, and minor variations and deviations in the Work may be authorized, in one or more of the following ways:

- 3.6.1. a Field Order (pursuant to paragraph 9.5),
- 3.6.2. ENGINEER's approval of a Shop Drawing or Sample (pursuant to paragraphs 6.26 and 6.27), or
- 3.6.3. ENGINEER's written interpretation or clarification (pursuant to paragraph 9.4).

### **Reuse of Documents:**

3.7. CONTRACTOR, and any Subcontractor or Supplier or other person or organization performing or furnishing any of the Work under a direct or indirect contract with OWNER (i) shall not have or acquire any title to or ownership rights in any of the Drawings, Specification or other documents (or copies of any thereof) prepared by or bearing the seal of ENGINEER or ENGINEER's Consultant, and (ii) shall not reuse any of such Drawings, Specifications, other documents or copies on extensions of the Project or any other project without written consent of OWNER and ENGINEER and specific written verification or adaption by ENGINEER.

## ARTICLE 4 - AVAILABILITY OF LANDS; SUBSURFACE AND PHYSICAL CONDITIONS; REFERENCE POINTS

### Availability of Lands:

4.1. OWNER shall furnish, as indicated in the Contract Documents, the lands upon which the Work is to be performed, rights-of-way and easements for access thereto, and such other lands which are designated for the use of CONTRACTOR. Upon reasonable written request, OWNER shall furnish CONTRACTOR with a correct statement of record legal title and legal description of the lands upon which the Work is to be performed and OWNER's interest therein as necessary for giving notice of or filing a mechanic's lien against such lands in accordance with applicable Laws and Regulations. OWNER shall identify any encumbrances or restrictions not of general application but specifically related to use of lands so furnished with which CONTRACTOR will have to comply in performing the Work. Easements for permanent structures or permanent changes in existing facilities will be obtained and paid for by OWNER, unless otherwise provided in the Contract Documents. If CONTRACTOR and OWNER are unable to agree on entitlement to or the amount or extent of any adjustments in the Contract Price or the Contract Times as a result of any delay in OWNER's furnishing these lands, rights-of-way or easements, CONTRACTOR may make a claim therefor as provided in Articles 11 and 12. CONTRACTOR shall provide for all additional lands and access thereto that may be required for temporary construction facilities or storage of materials and equipment.

### 4.2. Subsurface and Physical Conditions:

4.2.1. Reports and Drawings: Reference is made to the Supplementary Conditions for identification of:

4.2.1.1. Subsurface Conditions: Those reports of explorations and tests of subsurface conditions at or contiguous to the site that have been utilized by ENGINEER in preparing the Contract Documents; and

4.2.1.2. Physical Conditions: Those drawings of physical conditions in or relating to existing surface or subsurface structures at or contiguous to the site (except Underground Facilities) that have been utilized by ENGINEER in preparing the Contract Documents.

4.2.2. Limited Reliance by CONTRACTOR Authorized; Technical Data: CONTRACTOR may rely upon the general accuracy of the "technical data" contained in such reports and drawings, but such reports and drawings are not Contract Documents. Such "technical data" is identified in the Supplementary Conditions. Except for such reliance on such "technical data," CONTRACTOR may not rely upon or make any claim against OWNER, ENGINEER, or any of ENGINEER's Consultants with respect to:

4.2.2.1. the completeness of such reports and drawings for CONTRACTOR's purposes, including, but not limited to, any aspects of the means, methods, techniques, sequences and procedures of construction to be employed by CONTRACTOR and safety precautions and programs incident thereto, or

4.2.2.2. other data, interpretations, opinions and information contained in such reports or shown or indicated in such drawings, or

4.2.2.3. any CONTRACTOR interpretation of or conclusions drawn from any "technical data" or any such data, interpretations, opinions or information.

4.2.3. Notice of Differing Subsurface or Physical Conditions: If CONTRACTOR believes that any subsurface or physical condition at or contiguous to the site that is uncovered or revealed either:

4.2.3.1. is of such a nature as to establish that any "technical data" on which CONTRACTOR is entitled to rely as provided in paragraphs 4.2.1 and 4.2.2 is materially inaccurate, or

4.2.3.2. is of such a nature as to require a change in the Contract Documents, or

4.2.3.3. differs materially from that shown or indicated in the Contract Documents, or

4.2.3.4. is of an unusual nature, and differs materially from conditions ordinarily encountered and generally recognized as inherent in work of the character provided for in the Contract Documents; then

CONTRACTOR shall, promptly after becoming aware thereof and before further disturbing conditions affected thereby or performing any Work in connection therewith (except in an emergency as permitted by paragraph 6.23), notify OWNER and ENGINEER in writing about such condition. CONTRACTOR shall not further disturb such conditions or perform any Work in connection therewith (except as aforesaid) until receipt or written order to do so.

4.2.4. ENGINEER's Review: ENGINEER will promptly review the pertinent conditions, determine the necessity of OWNER's obtaining additional exploration or tests with respect thereto and advise OWNER in writing (with a copy to CONTRACTOR) of ENGINEER's findings and conclusions.

4.2.5. Possible Contract Documents Change: If ENGINEER concludes that a change in the Contract Documents is required as a result of a condition that meets one or more of the categories in paragraph 4.2.3., a Work Change Directive or a Change Order will be issued as provided in Article 10 to reflect and document the consequences of such change.

4.2.6. Possible Price and Times Adjustments: An equitable adjustment in the Contract Price or in the Contract Times, or both, will be allowed to the extent that the existence of such uncovered or revealed condition causes an increase or decrease in CONTRACTOR's cost of, or time required for performance of, the Work; subject, however, to the following:

4.2.6.1. such condition must meet any one or more of the categories described in paragraphs 4.2.3.1 through 4.2.3.4, inclusive;

4.2.6.2. a change in the Contract Documents pursuant to paragraph 4.2.5 will not be an automatic authorization of nor a condition precedent to entitlement to any such adjustment;

4.2.6.3. with respect to Work that is paid for on a Unit Price Basis, any adjustment in Contract Price will be subject to the provisions of paragraphs 9.10 and 11.9; and

4.2.6.4. CONTRACTOR shall not be entitled to any adjustment in the Contract Price or Times if,

4.2.6.4.1. CONTRACTOR knew of the existence of such conditions at the time CONTRACTOR made a final commitment to OWNER in respect of Contract Price and Contract Times by the submission of a bid or becoming bound under a negotiated contract; or

4.2.6.4.2. the existence of such condition could reasonably have been discovered or revealed as a result of any examination, investigation, exploration, test or study of the site and contiguous areas required by the Bidding Requirements or Contract Documents to be conducted by or for CONTRACTOR prior to CONTRACTOR's making such final commitment; or

4.2.6.4.3. CONTRACTOR failed to give the written notice within the time and as required by paragraph 4.2.3.

If OWNER and CONTRACTOR are unable to agree on entitlement to or as to the amount or length of any such equitable adjustment in the Contract Price or Contract Times, a claim may be made therefor as provided in Articles 11 and 12. However, OWNER, ENGINEER, and ENGINEER's Consultant shall not be liable to

CONTRACTOR for any claims, costs, losses or damages sustained by CONTRACTOR on or in connection with any other project or anticipated project.

#### 4.3. Physical Conditions - Underground Facilities:

4.3.1. Shown or Indicated: The information and data shown or indicated in the Contract Documents with respect to existing Underground Facilities at or contiguous to the site is based on information and data furnished to OWNER or ENGINEER by the owners of such Underground Facilities or by others. Unless it is otherwise expressly provided in the Supplementary Conditions:

4.3.1.1. OWNER and ENGINEER shall not be responsible for the accuracy or completeness of any such information or data; and

4.3.1.2. The cost of all of the following will be included in the Contract Price and CONTRACTOR shall have full responsibility for: (i) reviewing and checking all such information and data, (ii) locating all Underground Facilities shown or indicated in the Contract Documents, (iii) coordination of the Work with the owners of such Underground Facilities during construction, and (iv) the safety and protection of all such Underground Facilities as provided in paragraph 6.20 and repairing any damage thereto resulting from the Work.

4.3.2. Not Shown or Indicated: If any Underground Facility is uncovered or revealed at or contiguous to the site which was not shown or indicated in the Contract Documents, CONTRACTOR shall, promptly after becoming aware thereof and before further disturbing conditions affected thereby or performing any Work in connection therewith (except in an emergency as required by paragraph 6.23), identify the owner of such Underground Facility and give written notice to that owner and to OWNER and ENGINEER. ENGINEER will promptly review the Underground Facility and determine the extent, if any, to which a change is required in the Contract Documents to reflect and document the consequences of the existence of the Underground Facility. If ENGINEER concludes that a change in the Contract Documents is required, a Work Change Directive or Change Order will be issued as provided in Article 10 to reflect and document such consequences. During such time, CONTRACTOR shall be responsible for the safety and protection of such Underground Facility as provided in paragraphs 6.20. CONTRACTOR shall be allowed an increase in the Contract Price or an extension of the Contract Times, or both, to the extent that they are attributable to the existence of any Underground Facility that was not shown or indicated in the Contract Documents and that CONTRACTOR did not know of and could not reasonably have been expected to be aware of or to have anticipated. If OWNER and CONTRACTOR are unable to agree on entitlement to or the amount or length of any such adjustment in Contract Price or Contract Times, CONTRACTOR may make a

claim therefor as provided in Articles 11 and 12. However, OWNER, ENGINEER, and ENGINEER's Consultants shall not be liable to CONTRACTOR for any claims, costs, losses or damages incurred or sustained by CONTRACTOR on or in connection with any other project or anticipated project.

**Reference Points:**

4.4. OWNER shall provide engineering surveys to establish reference points for construction which in ENGINEER's judgment are necessary to enable CONTRACTOR to proceed with the Work. CONTRACTOR shall be responsible for laying out the Work, shall protect and preserve the established reference points and shall make no changes or relocations without the prior written approval of OWNER. CONTRACTOR shall report to ENGINEER whenever any reference point is lost or destroyed or requires relocation because of necessary changes in grades or locations, and shall be responsible for the accurate replacement or relocation of such reference points by professionally qualified personnel.

**4.5. Asbestos, PCBs, Petroleum, Hazardous Waste or Radioactive Material:**

4.5.1. OWNER shall be responsible for any Asbestos, PCBs, Petroleum, Hazardous Waste or Radioactive Material uncovered or revealed at the site which was not shown or indicated in Drawings or Specifications or identified in the Contract Documents to be within the scope of the Work and which may present a substantial danger to persons or property exposed thereto in connection with the Work at the site. OWNER shall not be responsible for any such materials brought to the site by CONTRACTOR, Subcontractor, Suppliers or anyone else for whom CONTRACTOR is responsible.

4.5.2. CONTRACTOR shall immediately: (i) stop all Work in connection with such hazardous condition and in any area affected thereby (except in an emergency as required by paragraph 6.23), and (ii) notify OWNER and ENGINEER (and thereafter confirm such notice in writing). OWNER shall promptly consult with ENGINEER concerning the necessity for OWNER to retain a qualified expert to evaluate such hazardous condition or take corrective action, if any. CONTRACTOR shall not be required to resume Work in connection with such hazardous condition or in any such affected area until after OWNER has obtained any required permits related thereto and delivered to CONTRACTOR special written notice: (i) specifying that such condition and any affected area is or has been rendered safe for the resumption of Work, or (ii) specifying any special conditions under which such Work may be resumed safely. If OWNER and CONTRACTOR cannot agree as to entitlement to or the amount or extent of any adjustment, if any, in Contract Price or Contract Times as a result of such Work stoppage or such special conditions under which Work is agreed by CONTRACTOR to be resumed, either party may make a claim therefor as provided in Articles 11 and 12.

4.5.3. If after receipt of such special written notice CONTRACTOR does not agree to resume such Work based on a reasonable belief it is unsafe, or does not agree to resume such Work under such special conditions, then OWNER may order such portion of the Work that is in connection with such hazardous condition or in such affected area to be deleted from the Work. If OWNER and CONTRACTOR cannot agree as to entitlement to or the amount or extent of an adjustment, if any, in Contract Price or Contract Times as a result of deleting such portion of the Work, then either party may make a claim therefor as provided in Articles 11 and 12. OWNER may have such deleted portion of the Work performed by OWNER's own forces or other in accordance with Article 7.

4.5.4. To the fullest extent permitted by Laws and Regulations, OWNER shall indemnify and hold harmless CONTRACTOR, Subcontractors, ENGINEERS, ENGINEER's Consultant and officers, directors, employees, agents, other consultants and subcontractors of each and any of them from and against all claims, costs, losses and damages arising out of or resulting from such hazardous condition, provided that: (i) any such claim, cost, loss or damage is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom, and (ii) nothing in this subparagraph 4.5.4 shall obligate OWNER to indemnify any person or entity from and against the consequences of that person's or entity's own negligence.

4.5.5. The provisions of paragraphs 4.2 and 4.3 are not intended to apply to Asbestos, PCBs, Petroleum, Hazardous Waste or Radioactive Material uncovered or revealed at the site.

## ARTICLE 5 - BONDS AND INSURANCE

### Performance, Payment and Other Bonds:

5.1. CONTRACTOR shall furnish Performance and Payment Bonds, each in an amount at least equal to the Contract Price as security for the faithful performance and payment of all CONTRACTOR's obligations under the Contract Documents. These Bonds shall remain in effect at least until one year after the date when final payment becomes due, except as provided otherwise by Laws or Regulations or by the Contract Documents. CONTRACTOR shall also furnish such other Bonds as are required by the Supplementary Conditions. All Bonds shall be in the form prescribed by the Contract Documents except as provided otherwise by Laws or Regulations, and shall be executed by such sureties as are named in the current list of "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies" as published in Circular 570 (amended) by the Audit Staff, Bureau of Government Financial Operations, U.S. Treasury Department. All Bonds signed by an agent must be accompanied by a certified copy of such agent's authority to act.

5.2 If the surety on any Bond furnished by CONTRACTOR is declared a bankrupt or becomes insolvent or its right to do business is terminated in any state where any part of the Project is located or it ceases to meet the requirements of paragraph 5.1, CONTRACTOR shall within ten days thereafter substitute another Bond and surety, both of which must be acceptable to OWNER.

### 5.3. Licensed Sureties and Insurers; Certificates of Insurance:

5.3.1. All Bonds and insurance required by the Contract Documents to be purchased and maintained by OWNER or CONTRACTOR shall be obtained from surety or insurance companies that are duly licensed or authorized in the jurisdiction in which the Project is located to issue Bonds or insurance policies for the limits and coverage so required. Such surety and insurance companies shall also meet such additional requirements and qualifications as may be provided in the Supplementary Conditions.

5.3.2. CONTRACTOR shall deliver to OWNER, with copies to each additional insured identified in the Supplementary Conditions, certificates of insurance (and other evidence of insurance requested by OWNER or any other additional insured) which CONTRACTOR is required to purchase and maintain in accordance with paragraph 5.4. OWNER shall deliver to CONTRACTOR, with copies to each additional insured identified in the Supplementary Conditions, certificates of insurance (and other evidence of insurance requested by CONTRACTOR or any other additional insured) which OWNER is required to purchase and maintain in accordance with paragraphs 5.6 and 5.7 hereof.

## **CONTRACTOR's Liability Insurance:**

5.4. CONTRACTOR shall purchase and maintain such liability and other insurance as is appropriate for the Work being performed and furnished and as will provide protection from claims set forth below which may arise out of or result from CONTRACTOR's performance and furnishing of the Work and CONTRACTOR's other obligations under the Contract Documents, whether it is to be performed or furnished by CONTRACTOR, any Subcontractor or Supplier, or by anyone directly or indirectly employed by any of them to perform or furnish any of the Work, or by anyone for whose acts any of them may be liable:

5.4.1 claims under workers' compensation, disability benefits and other similar employee benefit acts;

5.4.2. claims for damages because of bodily injury, occupational sickness or disease, or death of CONTRACTOR's employees;

5.4.3. claims for damages because of bodily injury, sickness or disease, or death of any person other than CONTRACTOR's employees;

5.4.4. claims for damages insured by customary personal injury liability coverage which are sustained: (i) by any person as a result of an offense directly or indirectly related to the employment of such person by CONTRACTOR, or (ii) by any other person for any other reason;

5.4.5. claims for damages, other than to the Work itself, because of injury to or destruction of tangible property wherever located, including loss of use resulting therefrom; and

5.4.6. claims for damages because of bodily injury or death of any person or property damage arising out of the ownership, maintenance or use of any motor vehicle. The policies of insurance so required by this paragraph 5.4 to be purchased and maintained shall:

5.4.7. with respect to insurance required by paragraphs 5.4.3 through 5.4.6 inclusive, include as additional insureds (subject to any customary exclusion in respect of professional liability) OWNER, ENGINEER, ENGINEER's Consultants and any other persons or entities identified in the Supplementary Conditions, all of whom shall be listed as additional insureds, and include coverage for the respective officers and employees of all such additional insureds;

5.4.8. include the specific coverages and be written for not less than the limits of liability provided in the Supplementary Conditions or required by Laws or Regulations, whichever is greater,

5.4.9. include completed operations insurance;

5.4.10. include contractual liability insurance covering CONTRACTOR's indemnity obligations under paragraphs 6.12, 6.16, and 6.31 through 6.33;

5.4.11. contain a provision or endorsement that the coverage afforded will not be canceled, materially changed or renewal refused until at least thirty days prior written notice has been given to OWNER and CONTRACTOR and to each other additional insured identified in the Supplementary Conditions to whom a certificate of insurance has been issued (and the certificates of insurance furnished by the CONTRACTOR pursuant to paragraph 5.3.2 will so provide);

5.4.12. remain in effect at least until final payment at all times thereafter when CONTRACTOR may be correcting, removing or replacing defective Work in accordance with paragraph 13.12; and

5.4.13. with respect to completed operations insurance, and any insurance coverage written on a claims-made basis, remain in effect for at least two years after final payment (and CONTRACTOR shall furnish OWNER and each other additional insured identified in the Supplementary Conditions to whom a certificate of insurance has been issued evidence satisfactory to OWNER and any such additional insured of continuation of such insurance at final payment and one year thereafter).

#### **OWNER's Liability Insurance:**

5.5. In addition to the insurance required to be provided by CONTRACTOR under paragraph 5.4, OWNER, at OWNER's option, may purchase and maintain at OWNER's expense OWNER's own liability insurance as will protect OWNER against claims which may arise from operations under the Contract Documents.

#### **Property Insurance:**

5.6. Unless otherwise provided in the Supplementary Conditions, OWNER shall purchase and maintain property insurance upon the Work at the site in the amount of the full replacement cost thereof (subject to such deductible amounts as may be provided in the Supplementary Conditions or required by Laws and Regulations). This insurance shall:

5.6.1. include the interest of OWNER, CONTRACTOR, Subcontractors, ENGINEER, ENGINEER's Consultants and any other persons or entities identified in the Supplementary Conditions, each of whom is deemed to have an insurable interest and shall be listed as an insured or additional insured;

5.6.2. be written on a Builder's Risk "all-risk" or open peril or special causes of loss policy form that shall at least include insurance for physical loss or damage to the Work, temporary buildings, falsework and Work in transit and shall insure against at least the following perils fire, lightning, extended coverage, theft, vandalism and malicious mischief, earthquake, collapse, debris removal, demolition occasioned by enforcement of Laws and Regulations, water damage, and such other perils as may be specifically required by the Supplementary Conditions;

5.6.3. include expenses incurred in the repair or replacement of any insured property (including but not limited to fees and charges of engineers and architects);

5.6.4. cover materials and equipment stored at the site or at another location that was agreed to in writing by OWNER prior to being incorporated in the Work, provided that such materials and equipment have been included in an Application for Payment recommended by ENGINEER; and

5.6.5. be maintained in effect until final payment is made unless otherwise agreed to in writing by OWNER, CONTRACTOR and ENGINEER with thirty days written notice to each other additional insured to whom a certificate of insurance has been issued.

5.7. OWNER shall purchase and maintain such boiler and machinery insurance or additional property insurance as may be required by the Supplementary Conditions or Laws and Regulations which will include the interest of OWNER, CONTRACTOR, Subcontractors, ENGINEER, ENGINEER's Consultants and any other persons or entities identified in the Supplementary Conditions, each of whom is deemed to have an insurable interest and shall be listed as an insured or additional insured.

5.8. All the policies of insurance (and the certificates or other evidence thereof) required to be purchased and maintained by OWNER in accordance with paragraphs 5.6 and 5.7 will contain a provision or endorsement that the coverage afforded will not be canceled or materially changed or renewal refused until at least thirty days' prior written notice has been given to OWNER and CONTRACTOR and to each other additional insured to whom a certificate of insurance has been issued and will contain waiver provisions in accordance with paragraph 5.11.

5.9. OWNER shall not be responsible for purchasing and maintaining any property insurance to protect the interests of CONTRACTOR, Subcontractors or others in the Work to the extent of any deductible amounts that are identified in the Supplementary Conditions. The risk of loss within such identified deductible amount, will be borne by CONTRACTOR, Subcontractor or others suffering any such loss and if any of them wishes property insurance coverage within the limits of such amounts, each may purchase and maintain it at the purchaser's own expense.

5.10. If CONTRACTOR requests in writing that other special insurance be included in the property insurance policies provided under paragraphs 5.6 or 5.7, OWNER shall, if possible, include such insurance, and the cost thereof will be charged to CONTRACTOR by appropriate Change Order or Written Amendment. Prior to commencement of the Work at the site, OWNER shall in writing advise CONTRACTOR whether or not such other insurance has been procured by OWNER.

5.11. Waiver of Rights:

5.11.1 OWNER and CONTRACTOR intend that all policies purchased in accordance with paragraphs 5.6 and 5.7 will protect OWNER, CONTRACTOR, Subcontractors, ENGINEER, ENGINEER's Consultants and all other persons or entities identified in the Supplementary Conditions to be listed as insureds or additional insureds in such policies and will provide primary coverage for all losses and damages caused by the perils covered thereby. All such policies shall contain provisions to the effect that in the event of payment of any loss or damage the insurers will have no rights of recovery against any of the insureds or additional insureds thereunder. OWNER and CONTRACTOR waive all rights against each other and their respective officers, directors, employees and agents for all losses and damages caused by, arising out of or resulting from any of the perils covered by such policies and any other property insurance applicable to the Work; and, in addition, waive all such rights against Subcontractors, ENGINEER, ENGINEER's Consultants and all other persons or entities identified in the Supplementary Conditions to be listed as insureds or additional insureds under such policies for losses and damages so caused. None of the above waivers shall extend to the rights that any party making such waiver may have to the proceeds of insurance held by OWNER as trustee or otherwise payable under any policy so issued.

5.11.2. In addition, OWNER waives all rights against CONTRACTOR, Subcontractors, ENGINEER, ENGINEER's Consultants and the officers, directors, employees and agents of any of them, for:

5.11.2.1. loss due to business interruption, loss of use or other consequential loss extending beyond direct physical loss or damage to OWNER's property or the Work caused by, arising out of or resulting from fire or other peril, whether or not insured by OWNER; and

5.11.2.2. loss or damage to the completed Project or part thereof caused by, arising out of or resulting from fire or other insured peril covered by any property insurance maintained on the complete Project or part thereof by OWNER during partial utilization pursuant to paragraph 14.10, after substantial completion pursuant to paragraph 14.8 or after final payment pursuant to paragraph 14.13.

Any insurance policy maintained by OWNER covering any loss, damage or consequential loss referred to in this paragraph 5.11.2 shall contain provisions to the effect that in the event of payment of any such loss, damage or consequential loss the insurers will have no rights of recovery against any of CONTRACTOR, Subcontractors, ENGINEER, ENGINEER's Consultants and the officers, directors, employees and agents of any of them.

#### **Receipt and Application of Insurance Proceeds**

5.12. Any insured loss under the policies of insurance required by paragraphs 5.6 and 5.7 will be adjusted with OWNER and made payable to OWNER as fiduciary for the insureds, as their interests may appear, subject to the requirements of any applicable mortgage clause and of paragraph 5.13. OWNER shall deposit in a separate account any money so received, and shall distribute it in accordance with such agreement as the parties in interest may reach. If no other special agreement is reached the damaged Work shall be repaired or replaced, the moneys so received applied on account thereof and the Work and the cost thereof covered by an appropriate Change Order or Written Amendment.

5.13. OWNER as fiduciary shall have power to adjust and settle any loss with insurers unless one of the parties in interest shall object in writing within fifteen days after the occurrence of loss to OWNER's exercise of this power. If such objection be made, OWNER as fiduciary shall make settlement with the insurers in accordance with such agreement as the parties in interest may reach. If no such agreement among the parties in interest is reached, OWNER as fiduciary shall adjust and settle the loss with the insurers and, if required in writing by any party in interest, OWNER as fiduciary shall give bond for the proper performance of such duties.

#### **Acceptance of Bonds and Insurance; Option to Replace:**

5.14. If either party (OWNER or CONTRACTOR) has any objection to the coverage afforded by or other provisions of the Bonds or insurance required to be purchased and maintained by the other party in accordance with Article 5 on the basis of non-conformance with the Contract Documents, the objecting party shall so notify the other party in writing within ten days after receipt of the certificates (or other evidence requested) required by paragraph 2.7. OWNER and CONTRACTOR shall each provide to the other such additional information in respect of insurance provided as the other may reasonable request. If either party does not purchase or maintain all of the Bonds and insurance required of such party by the Contract Documents, such party shall notify the other party in writing of such failure to purchase prior to the start of the Work, or of such failure to maintain prior to any change in the required coverage. Without prejudice to any other right of remedy, the other party may elect to obtain equivalent Bonds or insurance to protect such other party's interests at the expense of the party who was required to provide such

coverage, and a Change Order shall be issued to adjust the Contract Price accordingly.

#### **Partial Utilization - Property Insurance**

5.15. If OWNER finds it necessary to occupy or use a portion or portions of the Work prior to Substantial Completion of all the Work, such use or occupancy may be accomplished in accordance with paragraph 14.10; provided that no such use or occupancy shall commence before the insurers providing the property insurance have acknowledged notice thereof and in writing effected any changes in coverage necessitated thereby. The insurers providing the property insurance shall consent by endorsement on the policy or policies, but the property insurance shall not be canceled or permitted to lapse on account of any such partial use or occupancy.

## ARTICLE 6 - CONTRACTOR'S RESPONSIBILITIES

### Supervision and Superintendence:

6.1. CONTRACTOR shall supervise, inspect and direct the Work competently and efficiently, devoting such attention thereto and applying such skills and expertise as may be necessary to perform the Work in accordance with the Contract Documents. CONTRACTOR shall be solely responsible for the means, methods, techniques, sequences and procedures of construction, but CONTRACTOR shall not be responsible for the negligence of others in the design or specification of a specific means, method, technique, sequence or procedure of construction which is shown or indicated in the expressly required by the Contract Documents. CONTRACTOR shall be responsible to see that the completed Work complies accurately with the Contract Documents.

6.2. CONTRACTOR shall keep on the Work at all times during its progress a competent resident superintendent, who shall not be replaced without written notice to OWNER and ENGINEER except under extraordinary circumstances. The superintendent will be CONTRACTOR's representative at the site and shall have authority to act on behalf of CONTRACTOR. All communications to the superintendent shall be as binding as if given to CONTRACTOR.

### Labor, Materials, and Equipment:

6.3. CONTRACTOR shall provide competent, suitably qualified personnel to survey, lay out and construct the Work as required by the Contract Documents. CONTRACTOR shall at all times maintain good discipline and order at the site. Except as otherwise required for the safety or protection of persons or the Work or property at the site or adjacent thereto, and except as otherwise indicated in the Contract Documents, all Work at the site shall be performed during regular working hours and CONTRACTOR will not permit overtime work or the performance of Work on Saturday, Sunday or any legal holiday without OWNER's written consent given after prior written notice to ENGINEER.

6.4. Unless otherwise specified in the General Requirements, CONTRACTOR shall furnish and assume full responsibility for all materials, equipment, labor, transportation, construction equipment and machinery, tools, appliances, fuel, power, light, heat, telephone, water, sanitary facilities, temporary facilities and all other facilities and incidentals necessary for the furnishing, performance, testing, start-up and completion of the Work.

6.7.1.2. Substitute Items: If in ENGINEER's sole discretion an item of material or equipment proposed by CONTRACTOR does not qualify as an "or-equal" item under subparagraph 6.7.1.1, it will be considered a proposed substitute item. CONTRACTOR shall submit sufficient information as provided below to allow ENGINEER to determine that the item of material or equipment proposed is essentially equivalent to that named and an acceptable substitute therefor. The procedure for review by the ENGINEER will include the following as supplemented in the General Requirements and as ENGINEER may decide is appropriate under the circumstances. Requests for review of proposed substitute items of material or equipment will not be accepted by ENGINEER from anyone other than CONTRACTOR. If CONTRACTOR wishes to furnish or use a substitute item of material or equipment, CONTRACTOR shall first make written application to ENGINEER for acceptance thereof, certifying that the proposed substitute will perform adequately the functions and achieve the results called for by the general design, be similar in substance to that specified and be suited to the same use as that specified. The application will state the extent, if any, to which the evaluation and acceptance of the proposed substitute will prejudice CONTRACTOR's achievement of Substantial Completion on time, whether or not acceptance of the substitute for use in the Work will require a change in any of the Contract Documents (or in the provisions of any other direct contract with OWNER for work on the Project) to adapt the design to the proposed substitute and whether or not incorporation or use of the substitute in connection with the Work is subject to payment of any license fee or royalty. All variations of the proposed substitute from that specified will be identified in the application and available maintenance, repair, and replacement service will be indicated. The applications will also contain an itemized estimate of all costs or credits that will result directly or indirectly from acceptance of such substitute, including costs of redesign and claims of other contractors affected by the resulting change, all of which will be considered by ENGINEER in evaluating the proposed substitute. ENGINEER may require CONTRACTOR to furnish additional data about the proposed substitute.

6.7.1.3. CONTRACTOR's Expense: All data to be provided by CONTRACTOR in support of any proposed "or-equal" or substitute item will be at CONTRACTOR's expense.

6.7.2. Substitute Construction Methods or Procedures: If a specific means, method, technique, sequence or procedure of construction is shown or indicated in and expressly required by the Contract Documents, CONTRACTOR may furnish or utilize a substitute means, method, technique, sequence or procedure of construction acceptable to ENGINEER. CONTRACTOR shall submit sufficient information to allow ENGINEER, in

6.5. All materials and equipment shall be of good quality and new, except as otherwise provided in the Contract Documents. All warranties and guarantees specifically called for by the Specifications shall expressly run to the benefit of OWNER. If required by ENGINEER, CONTRACTOR shall furnish satisfactory evidence (including reports of required tests) as to the kind and quality of materials and equipment. All materials and equipment shall be applied, installed, connected, erected, used, cleaned and conditioned in accordance with instructions of the applicable Supplier, except as otherwise provided in the Contract Documents.

**Progress Schedule:**

6.6. CONTRACTOR shall adhere to the progress schedule established in accordance with paragraph 2.9 as it may be adjusted from time to time as provided below:

6.6.1. CONTRACTOR shall submit to ENGINEER for acceptance (to the extent indicated in paragraph 2.9) proposed adjustments in the progress schedule that will not change the Contract Times (or Milestones). Such adjustments will conform generally to the progress schedule then in effect and additionally will comply with any provisions of the General Requirements applicable thereto.

6.6.2. Proposed adjustments in the progress schedule that will change the Contract Times (or Milestones) shall be submitted in accordance with the requirements of paragraph 12.1. Such adjustments may only be made by a Change Order or Written Amendment in accordance with Article 12.

**6.7. Substitutes and "Or-Equal" Items:**

6.7.1. Whenever an item of material or equipment is specified or described in the Contract Documents by using the name of a proprietary item or the name of a particular Supplier, the specification or description is intended to establish the type, function and quality required. Unless the specification or description contains or is followed by words reading that no like, equivalent or "or-equal" item or no substitution is permitted, other items of material or equipment of other Suppliers may be accepted by ENGINEER under the following circumstances:

6.7.1.1. "Or-Equal": If in ENGINEER's sole discretion an item of material or equipment proposed by CONTRACTOR is functionally equal to that named and sufficiently similar so that no change in related Work will be required, it may be considered by ENGINEER as an "or-equal" item, in which case review and approval of the proposed item may, in ENGINEER's sole discretion, be accomplished without compliance with some or all of the requirements for acceptance of proposed substitute items.

ENGINEER's sole discretion, to determine that the substitute proposed is equivalent to that expressly called for by the Contract Documents. The procedure for review by ENGINEER will be similar to that provided in subparagraph 6.7.1.2.

6.7.3 Engineer's Evaluation: ENGINEER will be allowed a reasonable time within which to evaluate each proposal or submittal made pursuant to paragraphs 6.7.1.2 and 6.7.2. ENGINEER will be the sole judge of acceptability. No "or-equal" or substitute will be ordered, installed or utilized without ENGINEER's prior written acceptance which will be evidenced by either a Change Order or an approved Shop Drawing. OWNER may require CONTRACTOR to furnish at CONTRACTOR's expense a special performance guarantee or other surety with respect to any "or-equal" or substitute. ENGINEER will record time required by ENGINEER and ENGINEER's Consultant in evaluating substitutes proposed or submitted by CONTRACTOR pursuant to paragraphs 6.7.1.2 and 6.7.2 and in making changes in the Contract Documents (or in the provisions of any other direct contract with OWNER for work on the Project) occasioned thereby. Whether or not ENGINEER accepts a substitute item so proposed or submitted by CONTRACTOR, CONTRACTOR shall reimburse OWNER for the charges of ENGINEER and ENGINEER's Consultants for evaluating each such proposed substitute item.

## **6.8 Concerning Subcontractors, Suppliers and Others:**

6.8.1. CONTRACTOR shall not employ any Subcontractor, Supplier or other person or organization (including those acceptable to OWNER and ENGINEER as indicated in paragraph 6.8.2), whether initially or as a substitute, against whom OWNER or ENGINEER may have reasonable objection. CONTRACTOR shall not be required to employ any Subcontractor, Supplier or other person or organization to furnish or perform any of the Work against whom CONTRACTOR has reasonable objection.

6.8.2. If the Supplementary Conditions require the identity of certain Subcontractors, Suppliers or other persons or organizations (including those who are to furnish the principal items of materials or equipment) to be submitted to OWNER in advance of the specified date prior to the Effective Date of the Agreement for acceptance by OWNER and ENGINEER, and if CONTRACTOR has submitted a list thereof in accordance with the Supplementary Conditions, OWNER's or ENGINEER's acceptance (either in writing or by failing to make written objection thereto by the date indicated for acceptance or objection in the bidding documents or the Contract Documents) of any such Subcontractor, Supplier or other person or organization so identified may be revoked on the basis of reasonable objection after due investigation, in which case CONTRACTOR shall submit an acceptable substitute, the Contract Price will be

adjusted by the difference in the cost occasioned by such substitution and an appropriate Change Order will be issued or Written Amendment signed. No acceptance by OWNER or ENGINEER of any such Subcontractor, Supplier or other person or organization shall constitute a waiver of any right of OWNER or ENGINEER to reject defective Work.

6.9.1. CONTRACTOR shall be fully responsible to OWNER and ENGINEER for all acts and omissions of the Subcontractors, Suppliers and other persons and organizations performing or furnishing any of the Work under a direct or indirect contract with CONTRACTOR just as CONTRACTOR is responsible for CONTRACTOR's own acts and omissions. Nothing in the Contract Documents shall create for the benefit of any such Subcontractor, Supplier or other person or organization any contractual relationship between OWNER or ENGINEER any such Subcontractor, Supplier or other person or organization, nor shall it create any obligation on the part of OWNER or ENGINEER to pay or to see to the payment of any moneys due any such Subcontractor, Supplier or other person or organization except as may otherwise be required by Laws and Regulations.

6.9.2. CONTRACTOR shall be solely responsible for scheduling and coordinating the Work of Subcontractors, Suppliers and other persons and organizations performing or furnishing any of the Work under a direct or indirect contract with CONTRACTOR. CONTRACTOR shall require all Subcontractors, Suppliers and such other persons and organizations performing or furnishing any of the Work to communicate with the ENGINEER through CONTRACTOR.

6.10. The division and sections of the Specifications and the identifications of any Drawings shall not control CONTRACTOR in dividing the Work among Subcontractors or Suppliers or delineating the Work to be performed by any specific trade.

6.11. All Work performed for CONTRACTOR by a Subcontractor or Supplier will be pursuant to an appropriate agreement between CONTRACTOR and the Subcontractor or Supplier which specifically binds the Subcontractor or Supplier to the applicable terms and conditions of the Contract Documents for the benefit of OWNER and ENGINEER. Whenever any such agreement is with a Subcontractor or Supplier who is listed as an additional insured on the property insurance provided in paragraph 5.6 or 5.7, the agreement between the CONTRACTOR and the Subcontractor or Supplier will contain provisions whereby the Subcontractor or Supplier will waive all rights against OWNER, CONTRACTOR, ENGINEER, ENGINEER's Consultants and all other additional insureds for all losses and damages caused by, arising out of or resulting from any of the perils covered by such policies and any other property insurance applicable to the Work. If the insurers on any such policies require separate waiver forms to be signed by any Subcontractor or Supplier, CONTRACTOR will obtain the same.

## **Patent Fees and Royalties:**

6.12. CONTRACTOR shall pay all license fees and royalties and assume all costs incident to the use in the performance of the Work or the incorporation in the Work of any invention, design, process, product or device which is the subject of patent rights or copyrights held by others. If a particular invention, design, process, product or device is specified in the Contract Documents for use in the performance of the Work and if to the actual knowledge of OWNER or ENGINEER its use is subject to patent rights or copyrights calling for the payment of any license fee or royalty to others, the existence of such rights shall be disclosed by OWNER in the Contract Documents. To the fullest extent permitted by Laws and Regulations, CONTRACTOR shall indemnify and hold harmless OWNER, ENGINEER, ENGINEER's Consultants and the officers, directors, employees, agents and other consultants of each and any of them from and against all claims, costs, losses and damages arising out of or resulting from any infringement of patent rights or copyrights incident to the use in the performance of the Work or resulting from the incorporation in the Work of any invention, design, process, product or device not specified in the Contract Documents.

## **Permits:**

6.13. Unless otherwise provided in the Supplementary General Conditions, CONTRACTOR shall obtain and pay for all construction permits and licenses. OWNER shall assist CONTRACTOR, when necessary, in obtaining such permits and licenses. CONTRACTOR shall pay all governmental charges and inspection fees necessary for the prosecution of the Work, which are applicable at the time of opening of Bids, or, if there are no Bids, on the Effective Date of the Agreement. CONTRACTOR shall pay all charges of utility owners for connections to the Work, and OWNER shall pay all charges of such utility owners for capital costs related thereto such as plant investment fees.

## **6.14 Laws and Regulations:**

6.14.1. CONTRACTOR shall give all notices and comply with all Laws and Regulations applicable to furnishing and performance of the Work. Except where otherwise expressly required by applicable Laws and Regulations, neither OWNER nor ENGINEER shall be responsible for monitoring CONTRACTOR's compliance with any Laws or Regulations.

6.14.2 If CONTRACTOR performs any Work knowing or having reason to know that it is contrary to Laws or Regulations, CONTRACTOR shall bear all claims, costs, losses and damages caused by, arising out of or resulting therefrom; however, it shall not be CONTRACTOR's primary responsibility to make certain that the Specifications and Drawings are in accordance with Laws and Regulations, but this shall not relieve CONTRACTOR, of CONTRACTOR's

obligations under paragraph 3.3.2.

**Taxes:**

6.15. CONTRACTOR shall pay all sales, consumer, use and other similar taxes required to be paid by CONTRACTOR in accordance with the Laws and Regulations of the place of the Project which are applicable during the performance of the Work.

**Use of Premises:**

6.16. CONTRACTOR shall confine construction equipment, the storage of materials and equipment and the operations of workers to the site and land and areas identified in and permitted by the Contract Documents and other land and areas permitted by Laws and Regulations, right-of-ways, permits and easements, and shall not unreasonably encumber the premises with construction equipment or other materials or equipment. CONTRACTOR shall assume full responsibility for any damage to any such land or area, or to the owner or occupant thereof or of any adjacent land or areas, resulting from the performance of the Work. Should any claim be made by any such owner or occupant because of the performance of the Work, CONTRACTOR shall promptly settle with such other party by negotiation or otherwise resolve the claim by arbitration or other dispute resolution proceeding or at law. CONTRACTOR shall, to the fullest extent permitted by Laws and Regulations, indemnify and hold harmless OWNER, ENGINEER, ENGINEER's Consultant and anyone directly or indirectly employed by any of them from and against all claims, costs, losses, and damages arising out of or resulting from any claim or action, legal or equitable, brought by any such owner or occupant against OWNER, ENGINEER or any other party indemnified hereunder to the extent caused by or based upon CONTRACTOR's performance of the Work.

6.17. During the progress of the Work, CONTRACTOR shall keep the premises free from accumulations of waste materials, rubbish and other debris resulting from the Work. At the completion of the Work CONTRACTOR shall remove all waste materials, rubbish and debris from and about the premises as well as all tools, appliances, construction equipment and machinery and surplus materials. CONTRACTOR shall leave the site clean and ready for occupancy by OWNER at Substantial Completion of the Work. CONTRACTOR shall restore to original condition all property not designated for alteration by the Contract Documents.

6.18. CONTRACTOR shall not load nor permit any part of any structure to be loaded in any manner that will endanger the structure, nor shall CONTRACTOR subject any part of the Work or adjacent property to stresses or pressures that will endanger it.

## **Record Documents:**

6.19. CONTRACTOR shall maintain in a safe place at the site one record copy of all Drawings, Specifications, Addenda, Written Amendments, Change Orders, Work Change Directives, Field Orders and written interpretations and clarifications (issued pursuant to paragraph 9.4) in good order and annotated to show all changes made during construction. These record documents together with all approved Samples and a counterpart of all approved Shop Drawings will be available to ENGINEER for reference. Upon completion of the Work, these record documents, Samples and Shop Drawings will be delivered to ENGINEER for OWNER.

## **Safety and Protection:**

6.20. CONTRACTOR shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the Work. CONTRACTOR shall take all necessary precautions for the safety of, and shall provide the necessary protection to prevent damage, injury or loss to:

6.20.1. all persons on the Work site or who may be affected by the Work.

6.20.2. all the Work and materials and equipment to be incorporated therein, whether in storage on or off the site; and

6.20.3 other property at the site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures, utilities and Underground Facilities not designated for removal, relocation or replacement in the course of construction.

CONTRACTOR shall comply with all applicable Laws and Regulations of any public body having jurisdiction for safety of persons or property or to protect them from damage, injury or loss; and shall erect and maintain all necessary safeguards for such safety and protection. CONTRACTOR shall notify owners of adjacent property and of Underground Facilities and utility owners when prosecution of the Work may affect them, and shall cooperate with them in the protection, removal, relocation, and replacement of their property. All damage, injury or loss to any property referred to in paragraph 6.20.2 or 6.20.3 caused, directly or indirectly, in whole or in part, by CONTRACTOR, any Subcontractor, Supplier or any other person or organization directly or indirectly employed by any of them to perform or furnish any of the Work or anyone for whose acts any of them may be liable, shall be remedied by CONTRACTOR (except damage or loss attributable to the fault of Drawings or Specifications or to the acts or omissions of OWNER or ENGINEER or ENGINEER's Consultant or anyone employed by any of them or anyone for whose acts any of them may be liable, and not attributable, directly or indirectly, in whole or in part, to the fault or negligence of CONTRACTOR or any Subcontractor, Supplier or other person or organization directly or indirectly employed by any of them).

CONTRACTOR's duties and responsibilities for safety and for protection of the Work shall continue until such time as all the Work is completed and ENGINEER has issued a notice to OWNER and CONTRACTOR in accordance with paragraph 14.13 that the Work is acceptable (except as otherwise expressly provided in connection with Substantial Completion).

#### **Safety Representative:**

6.21. CONTRACTOR shall designate a qualified and experienced safety representative at the site whose duties and responsibilities shall be the prevention of accidents and the maintaining and supervising of safety precautions and programs.

#### **Hazard Communication Programs:**

6.22. CONTRACTOR shall be responsible for coordinating any exchange of material safety data sheets or other hazard communication information required to be made available to or exchange between or among employers at the site in accordance with Laws or Regulations.

#### **Emergencies:**

6.23. In emergencies affecting the safety or protection of persons or the Work of property at the site or adjacent thereto, CONTRACTOR, without special instruction or authorization from OWNER or ENGINEER, is obligated to act to prevent threatened damage, injury or loss. CONTRACTOR shall give ENGINEER prompt written notice if CONTRACTOR believes that any significant changes in the Work or variations from the Contract Documents have been caused thereby. If ENGINEER determines that a change in the Contract Documents is required because of the action taken by CONTRACTOR in response to such an emergency, a Work Change Directive or Change Order will be issued to document the consequences of such action.

#### **6.24. Shop Drawings and Samples:**

6.24.1. CONTRACTOR shall submit Shop Drawings to ENGINEER for review and approval in accordance with the accepted schedule of Shop Drawings and Sample submittals (see paragraph 2.9). All submittals will be identified as ENGINEER may require and in the number of copies specified in the General Requirements. The data shown on the Shop Drawings will be complete with respect to quantities, dimensions, specified performance and design criteria, materials and similar data to show ENGINEER the materials and equipment CONTRACTOR proposes to provide and to enable ENGINEER to review the information for the limited purposes required by paragraph 6.26.

6.24.2. CONTRACTOR shall also submit Samples to ENGINEER for review and approval in accordance with said accepted schedule of Shop Drawings and Sample submittals. Each Sample will be identified clearly as to material, Supplier, pertinent data such as catalog numbers and the use for which intended and otherwise as ENGINEER may require to enable ENGINEER to review the submittal for the limited purposes required by paragraph 6.26. The numbers of each Sample to be submitted will be as specified in the Specifications.

6.25. Submittal Procedures:

6.25.1. Before submitting each Shop Drawing or Sample, CONTRACTOR shall have determined and verified:

6.25.1.1. all field measurements, quantities, dimensions, specified performance criteria, installation requirements, materials, catalog numbers and similar information with respect thereto,

6.25.1.2. all materials with respect to intended use, fabrication, shipping, handling, storage, assembly and installation pertaining to the performance of the Work, and

6.25.1.3. all information relative to CONTRACTOR's sole responsible in respect of means, methods, techniques, sequences and procedures of construction and safety precautions and programs incident thereto.

CONTRACTOR shall also have reviewed and coordinated each Shop Drawing or Sample with other Shop Drawings and Samples and with the requirements of the Work and the Contract Documents.

6.25.2. Each submittal will bear a stamp or specific written indication that CONTRACTOR has satisfied CONTRACTOR's obligations under the Contract Documents with respect to CONTRACTOR's review and approval of that submittal.

6.25.3. At the time of each submission, CONTRACTOR shall give ENGINEER specific written notice of such variations, if any, that the Shop Drawing or Sample submitted may have from the requirements of the Contract Documents, such notice to be in a written communication separate from the submittal; and, in addition, shall cause a specific notation to be made on each Shop Drawing and Sample submitted to ENGINEER for review and approval of each such variation.

6.26. ENGINEER will review and approve Shop Drawings and Samples in accordance with the schedule of Shop Drawings and Sample submittals accepted by ENGINEER as required by paragraph 2.9. ENGINEER's review and approval will be only to determine if the items covered by the submittals will, after installation or incorporation in the Work, conform to the information given in the Contract Documents and be compatible with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents. ENGINEER's review and approval will not extend to means, methods, techniques, sequences or procedures of construction (except where a particular means, method, technique, sequence or procedure of construction is specifically and expressly called for by the Contract Documents) or to safety precautions or programs incident thereto. The review and approval of a separate item as such will not indicate approval of the assembly in which the item functions. CONTRACTOR shall make corrections required by ENGINEER, and shall return the required number of corrected copies of Shop Drawings and submit as required new Samples for review and approval. CONTRACTOR shall direct specific attention in writing to revisions other than the corrections called for by ENGINEER on previous submittals.

6.27. ENGINEER's review and approval of Shop Drawings or Samples shall not relieve CONTRACTOR from responsibility for any variation from the requirements of the Contract Documents unless CONTRACTOR has in writing called ENGINEER's attention to each such variation at the time of submission as required by paragraph 6.25.3 and ENGINEER has given written approval of each such variation by specific written notation thereof incorporated in or accompanying the Shop Drawing or Sample approval; nor will any approval by ENGINEER relieve CONTRACTOR from responsibility for complying with the requirements of paragraph 6.25.1.

6.28. Where a Shop Drawing or Sample is required by the Contract Documents or the schedule of Shop Drawings and Sample submissions accepted by ENGINEER as required by paragraph 2.9, any related Work performed prior to ENGINEER's review and approval of the pertinent submittal will be at the sole expense and responsibility of CONTRACTOR.

#### **Continuing the Work:**

6.29. CONTRACTOR shall carry on the Work and adhere to the progress schedule during all disputes or disagreements with OWNER. No Work shall be delayed or postponed pending resolution of any disputes or disagreements, except as permitted by paragraph 15.5 or as OWNER and CONTRACTOR may otherwise agree in writing.

#### **6.30. CONTRACTOR's General Warranty and Guarantee:**

6.30.1. CONTRACTOR warrants and guarantees to OWNER, ENGINEER and ENGINEER's Consultants that all Work will be in accordance with the Contract

Documents and will not be defective. CONTRACTOR's warranty and guarantee hereunder excludes defects or damage caused by:

6.30.1.1. abuse, modification or improper maintenance or operation by persons other than CONTRACTOR, Subcontractor, or Suppliers; or

6.30.1.2. normal wear and tear under normal usage.

6.30.2. CONTRACTOR's obligation to perform and complete the Work in accordance with the Contract Documents shall be absolute. None of the following will constitute an acceptance of Work that is not in accordance with the Contract Documents or a release of CONTRACTOR's obligation to perform the Work in accordance with the Contract Documents:

6.30.2.1. observation by ENGINEER;

6.30.2.2. recommendation of any progress or final payment by ENGINEER;

6.30.2.3. the insurance of a certificate of Substantial Completion or any payment by OWNER to CONTRACTOR under the Contract Documents;

6.30.2.4. use or occupancy of the Work or any part thereof by OWNER;

6.30.2.5. any acceptance by OWNER or any failure to do so;

6.30.2.6. any review and approval of a Shop Drawing or Sample submittal or the issuance of a notice of acceptability by ENGINEER pursuant to paragraph 14.13;

6.30.2.7. any inspection, test or approval by others; or

6.30.2.8. any correction of defective Work by OWNER.

#### Indemnification:

6.31. To the fullest extent permitted by Laws and Regulations, CONTRACTOR shall indemnify and hold harmless OWNER, ENGINEER, ENGINEER's Consultants and the officers, directors, employees, agents and other consultants of each and any of them from and against all claims, costs, losses and damages (including but not limited to all fees and charges of engineers, architects, attorneys and other professionals and all court or arbitration or other dispute resolution costs) caused by, arising out of or resulting from the performance of the Work, provided that any such claim, cost, loss or damage: (i) is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the

Work itself), including the loss of use resulting therefrom, and (ii) is caused in whole or in part by any negligent act or omission of CONTRACTOR, any Subcontractor, any Supplier, any person or organization directly or indirectly employed by any of them to perform or furnish any of the Work or anyone for whose acts any of them may be liable, regardless of whether or not caused in part by any negligence or omission of a person or entity indemnified hereunder or whether liability is imposed upon such indemnified party by Laws and Regulations regardless of the negligence of any such person or entity.

6.32. In any and all claims against OWNER or ENGINEER or any of their respective consultants, agents, officers, directors or employees by any employee (or the survivor or personal representative of such employee) of CONTRACTOR, any Subcontractor, any Supplier, any person or organization directly or indirectly employed by any of them to perform or furnish any of the Work, or anyone for whose acts any of them may be liable, the indemnification obligation under paragraph 6.31 shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for CONTRACTOR or any such Subcontractor, Supplier or other person or organization under workers' compensation acts, disability benefit acts or other employee benefit acts.

6.33. The indemnification obligations of CONTRACTOR under paragraph 6.31 shall not extend to the liability of ENGINEER and ENGINEER's Consultants, officers, directors, employees or agents caused by the professional negligence, errors or omissions of any of them.

#### **Survival of Obligations:**

6.34. All representations, indemnifications, warranties and guarantees made in, required by or given in accordance with the Contract Documents, as well as continuing obligations indicated in the Contract Documents, will survive final payment, completion and acceptance of the Work and termination or completion of the Agreement.

## ARTICLES 7 - OTHER WORK

### Related Work at Site:

7.1. OWNER may perform other work related to the Project at the site by OWNER's own forces, or let other direct contracts therefor which shall contain General Conditions similar to these, or have other work performed by utility owners. If the fact that such other work is to be performed was not noted in the Contract Documents, then: (i) written notice thereof will be given to CONTRACTOR prior to starting any such other work, and (ii) CONTRACTOR may make a claim therefor as provided in Articles 11 and 12 if CONTRACTOR believes that such performance will involve additional expense to CONTRACTOR or requires additional time and the parties are unable to agree as to the amount or extent thereof.

7.2. CONTRACTOR shall afford each other contractor who is a party to such a direct contract and each utility owner (and OWNER, if OWNER is performing the additional work with OWNER's employees) proper and safe access to the site and a reasonable opportunity for the introduction and storage of materials and equipment and the execution of such other work and shall properly connect and coordinate the Work and theirs. Unless otherwise provided in the Contract Documents, CONTRACTOR shall do all cutting, fitting and patching of the Work that may be required to make its several parts come together properly and integrate with such other work. CONTRACTOR shall not endanger any work of others by cutting, excavating or other wise altering their work and will only cut or alter their work with the written consent of ENGINEER and the others whose work will be affected. The duties and responsibilities of CONTRACTOR under this paragraph are for the benefit of such utility owners and other contractors to the extent that there are comparable provisions for the benefit of CONTRACTOR in said direct contracts between OWNER and such utility owners and other contractors.

7.3. If the proper execution or results of any part of CONTRACTOR's Work depends upon work performed by others under this Article 7, CONTRACTOR shall inspect such other work and promptly report to ENGINEER in writing any delays, defects or deficiencies in such other work that render it unavailable or unsuitable for the proper execution and results of CONTRACTOR's Work. CONTRACTOR's failure so to report will constitute an acceptance of such other work as fit and proper for integration with CONTRACTOR's Work except for latent or nonapparent defects and deficiencies in such other work.

## **Coordination:**

7.4. If OWNER contracts with others for the performance of other work on the Project at the site, the following will be set forth in Supplementary Conditions:

7.4.1. the person, firm or corporation who will have authority and responsibility for coordination of the activities among the various prime contractors will be identified;

7.4.2. the specific matters to be covered by such authority and responsibility will be itemized; and

7.4.3. the extent of such authority and responsibilities will be provided.

Unless otherwise provided in the Supplementary General Conditions, OWNER shall have sole authority and responsibility in respect of such coordination.

## ARTICLE 8 - OWNER'S RESPONSIBILITIES

8.1 Except as otherwise provided in these General Conditions, OWNER shall issue all communications to CONTRACTOR through ENGINEER.

8.2. In case of termination of the employment of ENGINEER, OWNER shall appoint an engineer against whom CONTRACTOR makes no reasonable objection, whose status under the Contract Documents shall be that of the former ENGINEER.

8.3. OWNER shall furnish the data required of OWNER under the Contract Documents promptly and shall make payments to CONTRACTOR promptly when they are due as provided in paragraphs 14.4 and 14.13.

8.4 OWNER's duties in respect of providing lands and easements and providing engineering surveys to establish reference points are set forth in paragraphs 4.1 and 4.4. Paragraph 4.2 refers to OWNER's identifying and making available to CONTRACTOR copies of reports of explorations and tests of subsurface conditions at the site and drawings of physical conditions in existing structures at or contiguous to the site that have been utilized by ENGINEER in preparing the Contract Documents.

8.5. OWNER's responsibilities in respect of purchasing and maintaining liability and property insurance are set forth in paragraphs 5.5 through 5.10.

8.6. OWNER is obligated to execute Change Orders as indicated in paragraph 10.4.

8.7. OWNER's responsibility in respect of certain inspections, tests and approvals is set forth in paragraph 13.4.

8.8. In connection with OWNER's right to stop Work or suspend Work, see paragraphs 13.10 and 15.1. Paragraph 15.2 deals with OWNER's right to terminate services of CONTRACTOR under certain circumstances.

8.9. The OWNER shall not supervise, direct, or have control or authority over, nor be responsible for, CONTRACTOR's means, methods, techniques, sequences or procedures of construction or the safety precautions and programs incident thereto, or for any failure to CONTRACTOR to comply with Laws and Regulations applicable to the furnishing or performance of the Work. OWNER will not be responsible for CONTRACTOR's failure to perform or furnish the Work in accordance with the Contract Documents.

8.10. OWNER's responsibility in respect of undisclosed Asbestos, PCB's, Petroleum, Hazardous Waste or Radioactive Materials uncovered or revealed at the site is set forth in paragraph 4.5.

8.11. If and to the extent OWNER has agreed to furnish CONTRACTOR reasonable evidence that financial arrangements have been made to satisfy OWNER's obligations under the Contract Documents, OWNER's responsibility in respect thereof will be as set forth in the Supplementary Conditions.

## ARTICLE 9 - ENGINEER'S STATUS DURING CONSTRUCTION

### OWNER's Representative:

9.1. ENGINEER will be OWNER's representative during the construction period. The duties and responsibilities and the limitations of authority of ENGINEER as OWNER's representative during construction are set forth in the Contract Documents and shall not be extended without written consent of OWNER and ENGINEER.

### Visits to Site:

9.2. ENGINEER will make visits to the site at intervals appropriate to the various stages of construction as ENGINEER deems necessary in order to observe as an experienced and qualified design professional the progress that has been made and the quality of the various aspects of CONTRACTOR's executed Work. Based on information obtained during such visits and observations, ENGINEER will endeavor for the benefit of OWNER to determine, in general, if the Work is proceeding in accordance with the Contract Documents. ENGINEER will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. ENGINEER's efforts will be directed toward providing for OWNER a greater degree of confidence that the completed Work will conform generally to the Contract Documents. On the basis of such visits and on-site observations, ENGINEER will keep OWNER informed of the progress of the Work and will endeavor to guard OWNER against defective Work. ENGINEER's visits and on-site observations are subject to all the limitations on ENGINEER's authority and responsibility set forth in paragraph 9.13, and particularly, but without limitation, during or as a result of ENGINEER's on-site visits or observations of CONTRACTOR's Work ENGINEER will not supervise, direct, control or have authority over or be responsible for CONTRACTOR's means, methods, techniques, sequences or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of CONTRACTOR to comply with Laws and Regulations applicable to the furnishing or performance of the Work.

### Project Representative:

9.3. If OWNER and ENGINEER agree, ENGINEER will furnish a Resident Project Representative to assist ENGINEER in providing more continuous observation of the Work. The responsibilities and authority and limitations thereon of any such Resident Project Representative and assistants will be as provided in paragraph 9.13 and in the Supplementary Conditions. If OWNER designates another representative or agent to represent OWNER at the site who is not ENGINEER's Consultant, agent or employee, the responsibilities and authority and limitations thereon of such other persons will be as provided in the Supplementary Conditions.

#### **Clarifications and Interpretations:**

9.4. ENGINEER will issue with reasonable promptness such written clarifications or interpretations of the requirements of the Contract Documents (in the form of Drawings or otherwise) as ENGINEER may determine necessary, which shall be consistent with the intent of and reasonably inferable from Contract Documents. Such written clarifications and interpretations will be binding on OWNER and CONTRACTOR. If OWNER or CONTRACTOR believes that a written clarification or interpretation justifies an adjustment in the Contract Price or the Contract Times and the parties are unable to agree to the amount or extent thereof, if any, OWNER or CONTRACTOR may make a written claim therefor as provided in Article 11 or Article 12.

#### **Authorized Variations in Work:**

9.5. ENGINEER may authorize minor variations in the Work from the requirements of the Contract Documents which do not involve an adjustment in the Contract Price or the Contract Times and are compatible with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents. These may be accomplished by a Field Order and will be binding on OWNER and also on CONTRACTOR who shall perform the Work involved promptly. If OWNER or CONTRACTOR believes that a Field Order justifies an adjustment in the Contract Price or the Contract Times and the parties are unable to agree as to the amount or extent thereof, OWNER or CONTRACTOR may make a written claim therefor as provided in Article 11 or 12.

#### **Rejecting Defective Work:**

9.6. ENGINEER will have authority to disapprove or reject Work which ENGINEER believes to be defective, or that ENGINEER believes will not produce a completed Project that conforms to the Contract Documents or that will prejudice the integrity of the design concept of the completed Project as a functioning whole as indicated by the Contract Documents or that will prejudice the integrity of the design concept of the completed Project as a functioning whole as indicated by the Contract Documents. ENGINEER will also have authority to require special inspection or testing of the Work as provided in paragraph 13.9, whether or not the Work is fabricated, installed or completed.

#### **Shop Drawings, Change Orders, and Payments:**

9.7. In connection with ENGINEER's authority as to Shop Drawings and Samples, see paragraphs 6.24 through 6.28 inclusive.

9.8. In connection with ENGINEER's authority as to Change Orders, see Articles 10, 11, and 12.

9.9. In connection with ENGINEER's authority as to Applications for Payment, see Article 14.

**Determinations for Unit Prices:**

9.10. ENGINEER will determine the actual quantities and classifications of Unit Price Work performed by CONTRACTOR. ENGINEER will review with the CONTRACTOR the ENGINEER's preliminary determinations on such matters before rendering a written decision thereon (by recommendation of an Application for Payment or otherwise). ENGINEER's written decision thereon will be final and binding upon OWNER and CONTRACTOR, unless, within ten days after the date of any such decisions, either OWNER or CONTRACTOR delivers to the other and to ENGINEER written notice of intention to appeal from ENGINEER's decision and: (i) an appeal from ENGINEER's decision is taken within the time limits and in accordance with the procedures set forth in Exhibit GC-A, "Dispute Resolution Agreement," entered into between OWNER and CONTRACTOR pursuant to Article 16, or (ii) if no such Dispute Resolution Agreement has been entered into, a formal proceeding is instituted by the appealing party in a forum of competent jurisdiction to exercise such rights or remedies as the appealing party may have with respect to ENGINEER's decision, unless otherwise agreed in writing by OWNER and CONTRACTOR. Such appeal will not be subject to the procedures of paragraph 9.11.

**Decisions on Disputes:**

9.11. ENGINEER will be the initial interpreter of the requirements of the Contract Documents and judge of the acceptability of the Work thereunder. Claims, disputes and other matters relating to the acceptability of the Work or the interpretation of the requirements of the Contract Documents pertaining to the performance and furnishing of the Work and Claims under Articles 11 and 12 in respect of changes in the Contract Price or Contract Times will be referred initially to ENGINEER in writing with a request for a formal decision in accordance with this paragraph. Written notice of each such claim, dispute or other matter will be delivered by the claimant to ENGINEER and the other party to the Agreement promptly (but in no event later than thirty days) after the start of the occurrence or event giving rise thereto, and written supporting data will be submitted to ENGINEER and the other party within sixty days after the start of such occurrence or event unless ENGINEER allows an additional period of time for the submission of additional or more accurate data in support of such claim, dispute or other matter. The opposing party shall submit any response to ENGINEER and the claimant within thirty days after receipt of the claimant's last submittal (unless ENGINEER allows additional time). ENGINEER will render a formal decision in writing within thirty days after receipt of the opposing party's submittal, if any, in accordance with this paragraph. ENGINEER's written decision on such claim, dispute or other matter will be final and binding upon OWNER and

CONTRACTOR unless: (i) an appeal from ENGINEER's decision is taken within the time limits and in accordance with the procedures set forth in EXHIBIT GC-A, "Dispute Resolution Agreement," entered into between OWNER and CONTRACTOR pursuant to Article 16, or (ii) if no such Dispute Resolution Agreement has been entered into, a written notice of intention to appeal from ENGINEER's written decision is delivered by OWNER or CONTRACTOR to the other and to ENGINEER within thirty days after the date of such decision and a formal proceeding is instituted by the appealing party in a forum of competent jurisdiction to exercise such rights or remedies as the appealing party may have with respect to such claim, dispute or other matter in accordance with applicable Laws and Regulations within sixty days of the date of such decision, unless otherwise agreed in writing by OWNER and CONTRACTOR.

9.12. When functioning as interpreter and judge under paragraphs 9.10 and 9.11, ENGINEER will not show partiality to OWNER or CONTRACTOR and will not be liable in connection with any interpretation or decision rendered in good faith in such capacity. The rendering of a decision by ENGINEER pursuant to paragraphs 9.10 or 9.11 with respect to any such claim, dispute or other matter (except any which have been waived by the making or acceptance of final payment as provided in paragraph 14.16) will be a condition precedent to any exercise by OWNER or CONTRACTOR of such rights or remedies as either may otherwise have under the Contract Documents or by Laws or Regulations in respect of any such claim, dispute or other matter pursuant to Article 16.

9.13. Limitations on ENGINEER's Authority and Responsibilities:

9.13.1. Neither ENGINEER's authority or responsibility under this Article 9 or under any other provision of the Contract Documents nor any decision made by ENGINEER in good faith either to exercise or not exercise such authority or responsibility or the undertaking, exercise or performance of any authority or responsibility by ENGINEER shall create, impose or give rise to any duty owed by ENGINEER to CONTRACTOR, any Subcontractor, any Supplier, any other person or organization, or to any surety for or employee or agent of any of them.

9.13.2. ENGINEER will not supervise, direct, control or have authority over or be responsible for CONTRACTOR's means, methods, techniques, sequences or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of CONTRACTOR to comply with Laws and Regulations applicable to the furnishing or performance of the Work. ENGINEER will not be responsible for CONTRACTOR's failure to perform or furnish the Work in accordance with the Contract Documents.

9.13.3. ENGINEER will not be responsible for the acts or omissions of CONTRACTOR or of any Subcontractor, any Supplier, or of any other person

or organization performing or furnishing any of the Work.

9.13.4. ENGINEER's review of the final Application of Payment and accompanying documentation and all maintenance and operating instructions, schedules, guarantees, bonds and certificates of inspection, tests and approvals and Other documentation required to be delivered by paragraph 14.12 will only be to determine generally that their content complies with the requirements of, and in the case of certificates of inspections, tests and approvals that the results certified indicate compliance with, the Contract Documents.

9.13.5. The limitations upon authority and responsibility set forth in this paragraph 9.13 shall also apply to ENGINEER's Consultants, Resident Project Representative and assistants.

## ARTICLE 10 - CHANGES IN THE WORK

10.1. Without invalidating the Agreement and without notice to any surety, OWNER may, at any time or from time to time, order additions, deletions or revisions in the Work. Such additions, deletions or revisions will be authorized by a Written Amendment, a Change Order, or a Work Change Directive. Upon receipt of any such document, CONTRACTOR shall promptly proceed with the Work involved which will be performed under the applicable conditions of the Contract Documents (except as otherwise specifically provided).

10.2. If OWNER and CONTRACTOR are unable to agree as to the extent, if any, of an adjustment in the Contract Price or an adjustment of the Contract Times that should be allowed as a result of a Work Change Directive, a claim may be made therefor as provided in Article 11 or Article 12.

10.3. CONTRACTOR shall not be entitled to an increase in the Contract Price or an extension of the Contract Times with respect to any Work performed that is not required by the Contract Documents as amended, modified and supplemented as provided in paragraphs 3.5 and 3.6 except in the case of an emergency as provided in paragraph 6.23 or in the case of uncovering Work as provided in paragraph 13.9.

10.4. OWNER and CONTRACTOR shall execute appropriate Change Orders recommended by ENGINEER (or Written Amendments) covering:

10.4.1. changes in the Work which are (i) ordered by OWNER pursuant to paragraph 10.1, (ii) required because of acceptance of defective Work under paragraph 13.13 or correcting defective Work under paragraph 13.14, or (iii) agreed to by the parties;

10.4.2. changes in the Contract Price or Contract Times which are agreed to by the parties; and

10.4.3. changes in the Contract Price or Contract Times which embody the substance of any written decision rendered by ENGINEER pursuant to paragraph 9.11; provided that, in lieu of executing any such Change Order, an appeal may be taken from any such decision in accordance with the provisions of the Contract Documents and applicable Laws and Regulations, but during any such appeal, CONTRACTOR shall carry on the Work and adhere to the progress schedule as provided in paragraph 6.29.

10.5. If notice of any change affecting the general scope of the Work or the provisions of the Contract Documents (including, but not limited to, Contract Price or Contract Times) is required by the provisions of any Bond to be given to a surety, the giving of any such notice will be CONTRACTOR's responsibility, and the amount of each applicable Bond will be adjusted accordingly.

## ARTICLE 11 - CHANGE OF CONTRACT PRICE

11.1. The Contract Price constitutes the total compensation (subject to authorized adjustments) payable to CONTRACTOR for performing the Work. All duties, responsibilities and obligations assigned to or undertaken by CONTRACTOR shall be at CONTRACTOR's expense without change in the Contract Price.

11.2. The Contract Price may only be changed by a Change Order or by a Written Amendment. Any claim for an adjustment in the Contract Price shall be based on written notice delivered by the party making the claim to the other party and to ENGINEER promptly (but in no event later than thirty days) after the start of the occurrence or event giving rise to the claim and stating the general nature of the claim. Notice of the amount of the claim with supporting data shall be delivered within sixty days after the start of such occurrence or event (unless ENGINEER allows additional time for claimant to submit additional or more accurate data in support of the claim) and shall be accompanied by claimant's written statement that the adjustment claimed covers all known amounts to which the claimant is entitled as a result of said occurrence or event. All claims for adjustment in the Contract Price shall be determined by ENGINEER in accordance with paragraph 9.11 if OWNER and CONTRACTOR cannot otherwise agree on the amount involved. No claim for an adjustment in the Contract Price will be valid if not submitted in accordance with this paragraph 11.2.

11.3. The value of any Work covered by a Change Order or of any claim for an adjustment in the Contract Price will be determined as follows:

11.3.1. where the Work involved is covered by unit prices contained in the Contract Documents, by application of such unit prices to the quantities of the items involved (subject to the provisions of paragraphs 11.9.1 through 11.9.3, inclusive);

11.3.2. where the Work involved is not covered by unit prices contained in the Contract Documents, by a mutually agreed lump sum (which may include an allowance for overhead and profit not necessarily in accordance with paragraph 11.6.2);

11.3.3. where the Work involved is not covered by unit prices contained in the Contract Documents and agreement to a lump sum is not reached under paragraph 11.3.2, on the basis of the Cost of the Work (determined as provided in paragraphs 11.4 and 11.5) plus a CONTRACTOR's fee for overhead and profit (determined as provided in paragraph 11.6).

## **Cost of the Work:**

11.4. The term Cost of the Work means the sum of all costs necessarily incurred and paid by CONTRACTOR in the proper performance of the Work. Except as otherwise may be agreed to in writing by OWNER, such costs shall be in amounts no higher than those prevailing in the locality of the Project, shall include only the following items and shall not include any of the costs itemized in paragraph 11.5:

11.4.1. Payroll costs for employees in the direct employ of CONTRACTOR in the performance of the Work under schedules of job classifications agreed upon by OWNER and CONTRACTOR. Such employees shall include without limitation superintendents, foremen and other personnel employed full-time at the site. Payroll costs for employees not employed full time on the Work shall be apportioned on the basis of their time spent on the Work. Payroll costs shall include, but not be limited to, salaries and wages plus the cost of fringe benefits which shall include social security contributions, unemployment, excise and payroll taxes, workers' compensation, health and retirement benefits, bonuses, sick leave, vacation and holiday pay applicable thereto. The expenses of performing Work after regular working hours, on Saturday, Sunday or legal holidays, shall be included in the above to the extent authorized by OWNER.

11.4.2. Cost of all materials and equipment furnished and incorporated in the Work, including costs of transportation and storage thereof, and Suppliers' field services required in connection therewith. All cash discounts shall accrue to CONTRACTOR unless OWNER deposits funds with CONTRACTOR with which to make payments, in which case the cash discounts shall accrue to OWNER. All trade discounts, rebates and refunds and returns from sale of surplus materials and equipment shall accrue to OWNER, and CONTRACTOR shall make provisions so that they may be obtained.

11.4.3. Payments made by CONTRACTOR to the Subcontractors for Work performed or furnished by Subcontractors. If required by OWNER, CONTRACTOR shall obtain competitive bids from subcontractors acceptable to OWNER and CONTRACTOR and shall deliver such bids to OWNER who will then determine, with the advice of ENGINEER, which bids, if any, will be accepted. If any subcontract provides that the Subcontractor is to be paid on the basis of Cost of the Work Plus a fee, the Subcontractor's Cost of the Work and fee shall be determined in the same manner as CONTRACTOR's Cost of the Work and fee as provided in paragraphs 11.4, 11.5, 11.6, and 11.7. All subcontracts shall be subject to the other provisions of the Contract Documents insofar as applicable.

11.4.4. Costs of special consultants (including but not limited to engineers, architects, testing laboratories, surveyors, attorneys and accountants) employed for services specifically related to the Work.

11.4.5. Supplemental costs including the following:

11.4.5.1. The proportion of necessary transportation, travel and subsistence expenses of CONTRACTOR's employees incurred in discharge of duties connected with the Work.

11.4.5.2. Cost, including transportation and maintenance, of all materials, supplies, equipment, machinery, appliances, office and temporary facilities at the site and hand tools not owned by the Workers, which are consumed in the performance of the Work, and cost less market value of such items used but not consumed which remain the property of CONTRACTOR.

11.4.5.3. Rentals of all construction equipment and machinery and the parts thereof whether rented from CONTRACTOR or others in accordance with rental agreements approved by OWNER with the advice of ENGINEER, and the costs of transportation, loading, unloading, installation, dismantling and removal thereof - all in accordance with the terms of said rental agreements. The rental of any such equipment, machinery or parts shall cease when the use thereof is no longer necessary for the Work.

11.4.5.4. Sales, consumer, use or similar taxes related to the Work, and for which CONTRACTOR is liable, imposed by Laws and Regulations.

11.4.5.5. Deposits lost for causes other than negligence of CONTRACTOR, any Subcontractor or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, and royalty payments and fees for permits and licenses.

11.4.5.6. Losses and damages (and related expenses) caused by damage to the Work, not compensated by insurance or otherwise, sustained by CONTRACTOR in connection with the performance and furnishing of the Work (except losses and damages within the deductible amounts of property insurance established by OWNER in accordance with paragraph 5.9), provided they have resulted from causes other than the negligence of CONTRACTOR, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable. Such losses shall include settlements made with the written consent and approval of OWNER. No such losses, damages and expenses shall be included in the Cost of the Work for the purposes of determining CONTRACTOR's fee. If, however, any such loss or damage

requires reconstruction and CONTRACTOR is placed in charge thereof, CONTRACTOR shall be paid for services a fee proportionate to that stated in paragraph 11.6.2.

11.4.5.7. The cost of utilities, fuel and sanitary facilities at the site.

11.4.5.8. Minor expenses such as telegrams, long distance telephone calls, telephone services at the site, expressage and similar petty cash items in connection with the Work.

11.4.5.9. Cost of premiums for additional Bonds and insurance required because of changes in the Work.

11.5. The term Cost of the Work shall not include any of the following:

11.5.1. Payroll costs and other compensation of CONTRACTOR's officers, executives, principals (of partnership and sole proprietorships), general managers, engineers, architects, estimators, attorneys, auditors, accountants, purchasing and contracting agents, expeditors, timekeepers, clerks and other personnel employed by CONTRACTOR whether at the site or in CONTRACTOR's principal or a branch office for general administration of the Work and not specifically included in the agreed upon schedule of job classifications referred to in paragraph 11.4.1 or specifically covered by paragraph 11.4.4 - all of which are to be considered administrative costs covered by the CONTRACTOR's fee.

11.5.2. Expenses of CONTRACTOR's principal and branch offices other than CONTRACTOR's office at the site.

11.5.3. Any part of CONTRACTOR's capital expenses, including interest on CONTRACTOR's capital employed for the Work and charges against CONTRACTOR for delinquent payments.

11.5.4. Cost of premiums for all Bonds and for all insurance whether or not CONTRACTOR is required by the Contract Documents to purchase and maintain the same (except for the cost of premiums covered by subparagraph 11.4.5.9 above).

11.5.5. Costs due to the negligence of CONTRACTOR, any Subcontractor, or anyone directly or indirectly employed by any of them for whose acts any of them may be liable, including but not limited to, the correction of defective Work, dispose of materials or equipment wrongly supplied and making good any damage to property.

Other overhead or general expense costs of any kind and the costs of any item not specifically and expressly included in paragraph 11.4.

11.6. The CONTRACTOR's fee allowed to CONTRACTOR for overhead and profit shall be determined as follows:

11.6.1. a mutually acceptable fixed fee; or

11.6.2. if a fixed fee is not agreed upon, then a fee based on the following percentages of the various portions of the Cost of the Work:

11.6.2.1. for costs incurred under paragraphs 11.4.1 and 11.4.2, the CONTRACTOR's fee shall be fifteen percent;

11.6.2.2. for costs incurred under paragraph 11.4.3, the CONTRACTOR's fee shall be five percent;

11.6.2.3. where one or more tiers of subcontracts are on the basis of Cost of the Work plus a fee and no fixed fee is agreed upon, the intent of paragraphs 11.4.1, 11.4.2, 11.4.3, and 11.6.2 is that the Subcontractor who actually performs or furnishes the Work, at whatever tier, will be paid a fee of fifteen percent of the costs incurred by such Subcontractor under paragraphs 11.4.1 and 11.4.2 and that any higher tier Subcontractor and CONTRACTOR will each be paid a fee of five percent of the amount paid to the next lower tier Subcontractor;

11.6.2.4. no fee shall be payable on the basis of costs itemized under paragraphs 11.4.4, 11.4.5 and 11.5;

11.6.2.5. the amount of credit to be allowed by CONTRACTOR to OWNER for any change which results in a net decrease in cost will be the amount of the actual net decrease in cost plus a deduction in CONTRACTOR's fee by an amount equal to five percent of such net decrease; and

11.6.2.6. when both additions and credits are involved in any one change, the adjustment in CONTRACTOR's fee shall be computed on the basis of the net change in accordance with paragraphs 11.6.2.1 through 11.6.2.5, inclusive.

11.7. Whenever the cost of any Work is to be determined pursuant to paragraphs 11.4 and 11.5, CONTRACTOR will establish and maintain records thereof in accordance with generally accepted accounting practices and submit in form acceptable to ENGINEER an itemized cost breakdown together with supporting data.

## Cash Allowances:

11.8. It is understood that CONTRACTOR has included in the Contract Price all allowances so named in the Contract Documents and shall cause the Work so covered to be furnished and performed for such sums as may be acceptable to OWNER and ENGINEER. CONTRACTOR agrees that:

11.8.1. the allowances include the cost to CONTRACTOR (less any applicable trade discounts) of materials and equipment required by the allowances to be delivered at the site, and all applicable taxes; and

11.8.2. CONTRACTOR's costs for unloading and handling on the site, labor, installation costs, overhead, profit and other expenses contemplated for the allowances have been included in the Contract Price and not in the allowances and no demand for additional payment on account of any of the foregoing will be valid.

Prior to final payment, an appropriate Change Order will be issued as recommended by ENGINEER to reflect actual amounts due CONTRACTOR on account of Work covered by allowances, and the Contract Price shall be correspondingly adjusted.

## 11.9. Unit Price Work:

11.9.1. Where the Contract Documents provide that all or part of the Work is to be Unit Price Work, initially the Contract Price will be deemed to include for all Unit Price Work an amount equal to the sum of the established unit price for each separately identified item of Unit Price Work times the estimated quantity of each item as indicated in the Agreement. The estimated quantities of items of Unit Price Work are not guaranteed and are solely for the purpose of comparison of Bids and determining an initial Contract Price. Determinations of the actual quantities and classifications of Unit Price Work performed by CONTRACTOR will be made by ENGINEER in accordance with paragraph 9.10.

11.9.2. Each unit price will be deemed to include an amount considered by CONTRACTOR to be adequate to cover CONTRACTOR's overhead and profit for each separately identified item.

11.9.3. OWNER or CONTRACTOR may make a claim for an adjustment in the Contract Price in accordance with Article 11 if:

11.9.3.1. the quantity of any item of Unit Price Work performed by CONTRACTOR differs materially and significantly from the estimated quantity of such item indicated in the Agreement; and

11.9.3.2. there is no corresponding adjustment with respect to any other item of Work; and

11.9.3.3. if CONTRACTOR believes that CONTRACTOR is entitled to an increase in Contract Price as a result of having incurred additional expenses or OWNER believes that OWNER is entitled to a decrease in Contract Price and the parties are unable to agree as to the amount of any such increase or decrease.

## ARTICLE 12 - CHANGE OF CONTRACT TIMES

12.1. The Contract Times (or Milestones) may only be changed by a Change Order or a Written Amendment. Any claim for an adjustment of the Contract Times (or Milestones) shall be based on written notice delivered by the party making the claim to the other party and to ENGINEER promptly (but in no event later than thirty days) after occurrence of the event giving rise to the claim and stating the general nature of the claim. Notice of the extent of the claim with supporting data shall be delivered within sixty days after such occurrence (unless ENGINEER allows an additional period of time to ascertain more accurate data in support of the claim) and shall be accompanied by the claimant's written statement that the adjustment claimed is the entire adjustment to which the claimant has reason to believe it is entitled as a result of the occurrence of said event. All claims of adjustment in the Contract Times (or Milestones) shall be determined by ENGINEER in accordance with paragraph 9.11 if OWNER and CONTRACTOR cannot otherwise agree. No claim for an adjustment in the Contract Times (or Milestones) will be valid if not submitted in accordance with the requirements of this paragraph 12.1.

12.2. All time limits stated in the Contract Documents are of the essence of the Agreement.

12.3. Where CONTRACTOR is prevented from completing any part of the Work within the Contract Times (or Milestones) due to delay beyond the control of CONTRACTOR, the Contract Times (or Milestones) will be extended in an amount equal to the time lost due to such delay if a claim is made therefor as provided in paragraph 12.1. Delays beyond the control of CONTRACTOR shall include, but not be limited to, acts or neglect by OWNER, acts or neglect of utility owners or other contractors performing other work as contemplated by Article 7, fires, floods, epidemics, abnormal weather conditions or acts of God. Delays attributable to and within the control of a Subcontractor or Supplies shall be deemed to be delays within the control of CONTRACTOR.

12.4. Where CONTRACTOR is prevented from completing any part of the Work within the Contract Times (or Milestones) due to delay beyond the control of both OWNER and CONTRACTOR, an extension of the Contract Times (or Milestones) in an amount equal to the time lost due to such delay shall be CONTRACTOR's sole and exclusive remedy for such delay. In no event shall OWNER be liable to CONTRACTOR, any Subcontractor, any Supplier, any other person or organization, or to any surety for or employee or agent of any of them, for damages arising out of or resulting from (i) delays caused by or within the control of CONTRACTOR, or (ii) delays beyond the control of both parties including but not limited to fires, floods, epidemics, abnormal weather conditions, acts of God or acts or neglect by utility owners or other contractors performing other work as contemplated by Article 7.

## **ARTICLE 13 - TEST AND INSPECTIONS; CORRECTION, REMOVAL OR ACCEPTANCE OF DEFECTIVE WORK**

13.1. Notice of Defects: Prompt notice of all defective Work to which OWNER or ENGINEER have actual knowledge will be given to CONTRACTOR. All defective Work may be rejected, corrected or accepted as provided in this Article 13.

### **Access to Work:**

13.2. OWNER, ENGINEER, ENGINEER's Consultants, other representatives and personnel of OWNER, independent testing laboratories and governmental agencies with jurisdictional interest will have access to the Work at reasonable times for their observation, inspecting and testing. CONTRACTOR shall provide them proper and safe conditions for such access and advise them of CONTRACTOR's site safety procedures and programs so that they may comply therewith as applicable.

### **Tests and Inspections:**

13.3. CONTRACTOR shall give ENGINEER timely notice of readiness of the Work for all required inspections, tests or approvals, and shall cooperate with inspection and testing personnel to facilitate required inspections or tests.

13.4. OWNER shall employ and pay for the services of an independent testing laboratory to perform all inspections, tests, or approvals required by the Contract Documents except:

13.4.1. for inspections, tests or approvals covered by paragraph 13.5 below;

13.4.2. that costs incurred in connection with tests or inspections conducted pursuant to paragraph 13.9 below shall be paid as provided in said paragraph 13.9; and

13.4.3. as otherwise specifically provided in the Contract Documents.

13.5. If Laws or Regulations of any public body having jurisdiction require any Work (or part thereof) specifically to be inspected, tested or approved by an employee or other representative of such public body, CONTRACTOR shall assume full responsibility for arranging and obtaining such inspections, tests or approvals, pay all costs in connection therewith, and furnish ENGINEER the required certificates of inspection, or approval. CONTRACTOR shall also be responsible for arranging and obtaining and shall pay all costs in connection with any inspections, tests or approvals required for OWNER's and ENGINEER's acceptance of materials or equipment to be incorporated in the Work, or of materials, mix designs, or equipment submitted for approval prior to CONTRACTOR's purchase there for incorporation in the Work.

13.6. If any Work (or the work of others) that is to be inspected, tested or approved is covered by CONTRACTOR without written concurrence of ENGINEER, it must, if requested by ENGINEER, be uncovered for observation.

13.7. Uncovering Work as provided in paragraph 13.6 shall be at CONTRACTOR's expense unless CONTRACTOR has given ENGINEER timely notice of CONTRACTOR's intention to cover the same and ENGINEER has not acted with reasonable promptness in response to such notice.

#### **Uncovering Work:**

13.8. If any Work is covered contrary to the written request of ENGINEER, it must, if requested by ENGINEER, be uncovered for ENGINEER's observation and replaced at CONTRACTOR's expense.

13.9. If ENGINEER considers it necessary or advisable that covered Work be observed by ENGINEER or inspected or tested by others, CONTRACTOR, at ENGINEER's request, shall uncover, expose or otherwise make available for observation, inspection or testing as ENGINEER may require, that portion of the Work in question, furnishing all necessary labor, material and equipment. If it is found that such Work is defective, CONTRACTOR shall pay all claims, costs, losses and damages caused by, arising out of or resulting from such uncovering, exposure, observation, inspection and testing and of satisfactory replacement or reconstruction (including but not limited to all costs of repair or replacement of work of others); and OWNER shall be entitled to an appropriate decrease in the Contract Price, and, if the parties are unable to agree as to the amount thereof, may make a claim therefor as provided in Article 11. If, however, such Work is not found to be defective, CONTRACTOR shall be allowed an increase in the Contract Price or an extension of the Contract Times (or Milestones), or both, directly attributable to such uncovering, exposure, observation, inspection, testing, replacement and reconstruction; and, if the parties are unable to agree as to the amount or extent thereof, CONTRACTOR may make a claim therefor as provided in Articles 11 and 12.

#### **OWNER May Stop the Work:**

13.10. If the Work is defective, or CONTRACTOR fails to supply sufficient skilled workers or suitable materials or equipment, or fails to furnish or perform the Work in such a way that the completed Work will conform to the Contract Documents, OWNER may order CONTRACTOR to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, this right of OWNER to stop the Work shall not give rise to any duty on the part of OWNER to exercise this right for the benefit of CONTRACTOR or any surety or other party.

## **Correction or Removal of Defective Work:**

13.11. If required by ENGINEER, CONTRACTOR shall promptly, as directed, either correct all defective Work, whether or not fabricated, installed or completed, or, if the Work has been rejected by ENGINEER, remove it from the site and replace it with Work that is not defective. CONTRACTOR shall pay all claims, costs, losses and damages caused by or resulting from such correction or removal (including but not limited to all costs of repair or replacement of work of others).

### **13.12. Correction Period:**

13.12.1. If within one year after the date of Substantial Completion or such longer period of time as may be prescribed by Laws or Regulations or by the terms of any applicable special guarantee required by the Contract Documents or by any specific provisions of the Contract Documents, any Work is found to be defective, CONTRACTOR shall promptly, without cost to OWNER and in accordance with OWNER's written instructions: (i) correct such defective Work, or, if it has been rejected by OWNER, remove it from the site and replace it with Work that is not defective, and (ii) satisfactorily correct or remove and replace any damage to other Work or the work of others resulting therefrom. If CONTRACTOR does not promptly comply with the terms of such instructions, or in an emergency where delay would cause serious risk or loss or damage, OWNER may have the defective Work corrected or the rejected Work removed and replaced, and all claims, costs, losses and damages caused by or resulting from such removal and replacement (including but not limited to all costs of repair or replacement of work of others) will be paid by CONTRACTOR.

13.12.2. In special circumstances where a particular item of equipment is placed in continuous services before Substantial Completion of all the Work, the correction period for that item may start to run from an earlier date if so provided in the Specifications or by Written Amendment.

13.12.3. Where defective Work (and damage to other Work resulting therefrom) has been corrected, removed or replaced under this paragraph 13.12, the correction period hereunder with respect to such Work will be extended for an additional period of one year after such correction or removal and replacement has been satisfactorily completed.

## **Acceptance of Defective Work:**

13.13. If, instead of requiring correction or removal and replacement of defective Work, OWNER (and, prior to ENGINEER's recommendation of final payment, also ENGINEER) prefers to accept it, OWNER may do so. CONTRACTOR shall pay all claims, costs, losses and damages attributable to OWNER's evaluation of and determination to accept such defective Work (such costs to be approved by

ENGINEER as to reasonableness). If any such acceptance occurs prior to ENGINEER's recommendation of final payment, a Change Order will be issued incorporating the necessary revisions in the Contract Documents with respect to the Work; and OWNER shall be entitled to an appropriate decrease in the Contract Price, and, if the parties are unable to agree as to the amount thereof, OWNER may make a claim therefor as provided in Article 11. If the acceptance occurs after such recommendation, an appropriate amount will be paid by CONTRACTOR to OWNER.

#### **OWNER May Correct Defective Work:**

13.14. If CONTRACTOR fails within a reasonable time after written notice from ENGINEER to correct defective Work or to remove and replace rejected Work as required by ENGINEER in accordance with paragraph 13.11, or if CONTRACTOR fails to perform the Work in accordance with the Contract Documents, or if CONTRACTOR fails to comply with any other provisions of the Contract Documents, OWNER may, after seven days' written notice to CONTRACTOR, correct and remedy such deficiency. In exercising the rights and remedies under this paragraph OWNER shall proceed expeditiously. In connection with such corrective and remedial action, OWNER may exclude CONTRACTOR from all or part of the site, take possession of all or part of the Work, and suspend CONTRACTOR's services related thereto, take possession of CONTRACTOR's tools, appliances, construction equipment and machinery at the site and incorporate in the Work all materials and equipment stored at the site or for which OWNER has paid CONTRACTOR but which are stored elsewhere. CONTRACTOR shall allow OWNER, OWNER's representatives, agents and employees, OWNER's other contractors and ENGINEER and ENGINEER's Consultant access to the site to enable OWNER to exercise the rights and remedies under this paragraph. All claims, costs, losses and damages incurred or sustained by OWNER in exercising such rights and remedies will be charged against CONTRACTOR and a Change Order will be issued incorporating the necessary revisions in the Contract Documents with respect to the Work; and OWNER shall be entitled to an appropriate decrease in the Contract Price, and, if the parties are unable to agree as to the amount thereof, OWNER may make a claim therefor as provided in Article 11. Such claims, costs, losses and damages will include but not be limited to all costs of repair or replacement of work of others destroyed or damaged by correction, removal or replacement of CONTRACTOR's defective Work. CONTRACTOR shall not be allowed an extension of the Contract Times (or Milestones) because of any delay in the performance of the Work attributable to the exercise by OWNER of OWNER's rights and remedies hereunder.

## ARTICLE 14 - PAYMENTS TO CONTRACTOR AND COMPLETION

### Schedule of Values:

14.1. The schedule of values established as provided in paragraph 2.9 will serve as the basis for progress payments and will be incorporated into a form of Application for Payment acceptable to ENGINEER. Progress payments on account of Unit Price Work will be based on the number of units completed.

### Application for Progress Payments:

14.2. At least twenty days before the date established for each progress payment (but not more often than once a month), CONTRACTOR shall submit to ENGINEER for review an Application for Payment filled out and signed by CONTRACTOR covering the Work completed as of the date of the Application and accompanied by such supporting documentation as is required by the Contract Documents. If payment is requested on the basis of materials and equipment not incorporated in the Work but delivered and suitably stored at the site or at another location agreed to in writing, the Application for Payment shall also be accompanied by a bill of sale, invoice or other documentation warranting that OWNER has received the materials and equipment free and clear of all Liens and evidence that the materials and equipment are covered by appropriate property insurance and other arrangements to protect OWNER's interest therein, all of which will be satisfactory to OWNER. The amount of retainage with respect to progress payments will be as stipulated in the Agreement.

### CONTRACTOR's Warranty of Title:

14.3. CONTRACTOR warrants and guarantees that title to all Work, materials and equipment covered by any Application for Payment, whether incorporated in the Project or not, will pass to OWNER no later than the time of payment free and clear of all Liens.

### Review of Application for Progress Payment:

14.4. ENGINEER will, within ten days after receipt of each Application for Payment, either indicate in writing a recommendation of payment and present the Application to OWNER, or return the Application to CONTRACTOR indicating in writing ENGINEER's reason for refusing or recommend payment. In the latter case, CONTRACTOR may make the necessary corrections and resubmit the Application. Ten days after presentation of the Application for Payment to OWNER with ENGINEER's recommendation, the amount recommended will (subject to the provisions of the last sentence of paragraph 14.7) become due and when due will be paid by OWNER to CONTRACTOR.

14.5. ENGINEER's recommendation of any payment requested in an Application for Payment will constitute a representation by ENGINEER to OWNER, based on ENGINEER's on-site observations of the executed Work as an experienced and qualified design professional and on ENGINEER's review of the Application for Payment and the accompanying data and schedules, that to the best of ENGINEER's knowledge, information and belief:

14.5.1. the Work has progressed to the point indicated,

14.5.2. the quality of the Work is generally in accordance with the Contract Documents (subject to an evaluation of the Work as a functioning whole prior to or upon Substantial Completion, to the results of any subsequent tests called for in the Contract Documents, to a final determination of quantities and classifications for Unit Price Work under paragraph 9.10, and to any other qualifications stated in the recommendation), and

14.5.3. the conditions precedent to CONTRACTOR's being entitled to such payment appear to have been fulfilled in so far as it is ENGINEER's responsibility to observe the Work.

However, by recommending any such payment ENGINEER will not thereby be deemed to have represented that: (i) exhaustive or continuous on-site inspections have been made to check the quality or the quantity of the Work beyond the responsibilities specifically assigned to ENGINEER in the Contract Documents or (ii) that there may not be other matters or issues between the parties that might entitle CONTRACTOR to be paid additionally by OWNER or entitle OWNER to withhold payment to CONTRACTOR.

14.6. ENGINEER's recommendation of any payment, including final payment, shall not mean that ENGINEER is responsible for CONTRACTOR's means, methods, techniques, sequences or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of CONTRACTOR to comply with Laws and Regulations applicable to the furnishing or performance of Work, or for any failure of CONTRACTOR to perform or furnish Work in accordance with the Contract Documents.

14.7. ENGINEER may refuse to recommend the whole or any part of any payment if, in ENGINEER's opinion, it would be incorrect to make the representations to OWNER referred to in paragraph 14.5. ENGINEER may also refuse to recommend any such payment, or, because of subsequently discovered evidence or the results of subsequent inspections or tests, nullify any such payment previously recommend, to such extent as may be necessary in ENGINEER's opinion to protect OWNER from loss because:

14.7.1. the work is defective, or completed Work has been damaged requiring correction or replacement,

14.7.2. the Contract Price has been reduced by Written Amendment or Change Order,

14.7.3. OWNER has been required to correct defective Work or complete Work in accordance with paragraph 13.14, or

14.7.4. ENGINEER has actual knowledge of the occurrence of any of the events enumerated in paragraphs 15.2.1 through 15.2.4 inclusive.

OWNER may refuse to make payment of the full amount recommended by ENGINEER because:

14.7.5. claims have been made against OWNER on account of CONTRACTOR's performance or furnishing of the Work,

14.7.6. Liens have been filed in connection with the Work, except where CONTRACTOR has delivered a specific Bond satisfactory to OWNER to secure the satisfaction and discharge of such Liens.

14.7.7. there are other items entitling OWNER to a set-off against the amount recommended, or

14.7.8. OWNER has actual knowledge of the occurrence of any of the events enumerated in paragraphs 14.7.1 through 14.7.3 or paragraphs 15.2.1 through 15.2.4 inclusive; but OWNER must give CONTRACTOR immediate written notice (with a copy to ENGINEER) stating the reasons for such action and promptly pay CONTRACTOR the amount so withheld, or any adjustment thereto agreed to by OWNER and CONTRACTOR, when CONTRACTOR corrects to OWNER's satisfaction the reasons for such action.

#### **Substantial Completion:**

14.8. When CONTRACTOR considers the entire Work ready for its intended use CONTRACTOR shall notify OWNER and ENGINEER in writing that the entire Work is substantially complete (except for items specifically listed by CONTRACTOR as incomplete) and request that ENGINEER issue a certificate of Substantial Completion. Within a reasonable time thereafter, OWNER, CONTRACTOR and ENGINEER shall make an inspection of the Work to determine the status of completion. If ENGINEER does not consider the Work substantially complete, ENGINEER will notify CONTRACTOR in writing giving the reason therefor. If ENGINEER considers the Work substantially complete, ENGINEER will prepare and deliver to OWNER a tentative certificate of Substantial Completion which shall fix the date of Substantial

Completion. There shall be attached to the certificate a tentative list of items to be completed or corrected before final payment. OWNER shall have seven days after receipt of the tentative certificate during which to make written objection to ENGINEER as to any provisions of the certificate or attached list. If, after considering such objections, ENGINEER concludes that the Work is not substantially complete, ENGINEER will within fourteen days after submission of the tentative certificate to OWNER notify CONTRACTOR in writing, stating the reasons therefor. If, after consideration of OWNER's objections, ENGINEER considers the Work substantially complete, ENGINEER will within said fourteen days execute and deliver to OWNER and CONTRACTOR a definitive certificate of Substantial Completion (with a revised tentative list of items to be completed or corrected) reflecting such changes from the tentative certificate as ENGINEER believes justified after consideration of any objections from OWNER. At the time of delivery of the tentative certificate of Substantial Completion ENGINEER will deliver to OWNER and CONTRACTOR a written recommendation as to division of responsibilities pending final payment between OWNER and CONTRACTOR with respect to security, operation, safety, maintenance, heat, utilities, insurance and warranties and guarantees. Unless OWNER and CONTRACTOR agree otherwise in writing and so inform ENGINEER in writing prior to ENGINEER's issuing the definitive certificate of Substantial Completion, ENGINEER's aforesaid recommendation will be binding on OWNER and CONTRACTOR until final payment.

14.9. OWNER shall have the right to exclude CONTRACTOR from Work after the date of Substantial Completion, but OWNER shall allow CONTRACTOR reasonable access to complete or correct items on the tentative list.

#### Partial Utilization:

14.10. Use by OWNER at OWNER's option of any substantially completed part of the Work which: (i) has specifically been identified in the Contract Documents, or (ii) OWNER, ENGINEER and CONTRACTOR agree constitutes a separately functioning and usable part of the Work that can be used by OWNER for its intended purpose without significant interference with CONTRACTOR's performance of the remainder of the Work, may be accomplished prior to Substantial Completion of all the Work subject to the following:

14.10.1. OWNER at any time may request CONTRACTOR in writing to permit OWNER to use any such part of the Work which OWNER believes to be ready for its intended use and substantially complete. If CONTRACTOR agrees that such part of the Work is substantially complete, CONTRACTOR will certify to OWNER and ENGINEER that such part of the Work is substantially complete and request ENGINEER to issue a certificate of Substantial Completion for that part of the Work. CONTRACTOR at any time may notify OWNER and ENGINEER in writing that CONTRACTOR considers any such part of the Work ready for its intended use and substantially complete and request ENGINEER

to issue a certificate of Substantial Completion for that part of the Work. Within a reasonable time after either such request, OWNER, CONTRACTOR and ENGINEER shall make an inspection of that part of the Work to determine its status of completion. If ENGINEER does not consider that part of the Work to be substantially complete, ENGINEER will notify OWNER and CONTRACTOR in writing giving the reasons therefor. If ENGINEER considers that part of the Work to be substantially complete, the provisions of paragraphs 14.8 and 14.9 will apply with respect to certification of Substantial Completion of that part of the Work and the division of responsibility in respect thereof and access thereto.

14.10.2. No occupancy or separate operation of part of the Work will be accomplished prior to compliance with the requirements of paragraph 5.15 in respect of property insurance.

#### **Final Inspection:**

14.11. Upon written notice from CONTRACTOR that the entire Work or an agreed portion thereof is complete, ENGINEER will make a final inspection with OWNER and CONTRACTOR and will notify CONTRACTOR in writing of all particulars in which this inspection reveals that the Work is incomplete or defective. CONTRACTOR shall immediately take such measures as are necessary to complete such Work or remedy such deficiencies.

#### **Final Application for Payment:**

14.12. After CONTRACTOR has completed all such corrections to the satisfaction of ENGINEER and delivered in accordance with the Contract Documents all maintenance and operating instructions, schedules, guarantees, Bonds, certificates or other evidence of insurance required by paragraph 5.4, certificates of inspection, marked-up record documents (as provided in paragraph 6.19) and other documents, CONTRACTOR may make application for final payment following the procedure for progress payments. The final Application for Payment shall be accompanied (except as previously delivered) by: (i) all documentation called for in the Contract Documents, including but not limited to the evidence of insurance required by subparagraph 5.4.13, (ii) consent of the surety, if any, to final payment, and (iii) complete and legally effective releases or waivers (satisfactory to OWNER) of all Liens arising out of or filed in connection with the Work. In lieu of such releases or waivers of Liens and as approved by OWNER, CONTRACTOR may furnish receipts or releases in full and an affidavit of CONTRACTOR that: (i) the release and receipts include all labor, services, material and equipment for which a Lien could be filed, and (ii) all payrolls, material and equipment bills and other indebtedness connected with the Work for which OWNER or OWNER's property might in any way be responsible have been paid or otherwise satisfied. If any Subcontractor or Supplier fails to furnish such a release or receipt in full, CONTRACTOR may furnish

a Bond or other collateral satisfactory to OWNER to indemnify OWNER against any Lien.

#### **Final Payment and Acceptance:**

14.13. If, on the basis of ENGINEER's observation of the Work during construction and final inspection, and ENGINEER's review of the final Application of Payment and accompanying documentation as required by the Contract Documents, ENGINEER is satisfied that the Work has been completed and CONTRACTOR's other obligations under the Contract Documents have been fulfilled, ENGINEER will, within ten days after receipt of the final Application for Payment, indicate in writing ENGINEER's recommendation of payment and present the Application to OWNER for payment. At the same time ENGINEER will also give written notice to OWNER and CONTRACTOR that the Work is acceptable subject to the provisions of paragraph 14.15. Otherwise, ENGINEER will return the Application to CONTRACTOR, indicating in writing the reasons for refusing to recommend final payment, in which case CONTRACTOR shall make the necessary corrections and resubmit the Application. Thirty days after the presentation to OWNER of the Application and accompanying documentation, in appropriate form and substance and with ENGINEER's recommendation and notice of acceptability, the amount recommended by ENGINEER will become due and will be paid by OWNER to CONTRACTOR.

14.14. If, through no fault of CONTRACTOR, final completion of the Work is significantly delayed and if ENGINEER so confirms, OWNER shall, upon receipt of CONTRACTOR's final Application for Payment and recommendation of ENGINEER, and without terminating the Agreement, make payment of the balance due for that portion of the Work fully completed and accepted. If the remaining balance to be held by OWNER for Work not fully completed or corrected is less than the retainage stipulated in the Agreement, and if Bonds have been furnished as required in paragraph 5.1, the written consent of the surety to the payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by CONTRACTOR to ENGINEER with the Application for such payment. Such payment shall be made under the terms and conditions governing final payment, except that it shall not constitute a waiver of claims.

**Wavier of Claims:**

14.15. The making and acceptance of final payment will constitute:

14.15.1. a waiver of all claims by OWNER against CONTRACTOR, except claims arising from unsettled Liens, from defective Work appearing after final inspection pursuant to paragraph 14.11, from failure to comply with the Contract Documents or the terms of any special guarantees specified therein, or from CONTRACTOR's continuing obligations under the Contract Documents; and

14.15.2. a waiver of all claims by CONTRACTOR against OWNER other than those previously make in writing and still unsettled.

## ARTICLE 15 - SUSPENSION OF WORK AND TERMINATION

### OWNER May Suspend Work:

15.1. At any time and without cause, OWNER may suspend the Work or any portion thereof for a period of not more than ninety days by notice in writing to CONTRACTOR and ENGINEER which will fix the date on which Work will be resumed. CONTRACTOR shall resume the Work on the date so fixed. CONTRACTOR shall be allowed an adjustment in the Contract Price or an extension of the Contract Times, or both, directly attributable to any such suspension if CONTRACTOR makes an approved claim therefor as provided in Articles 11 and 12.

### OWNER May Terminate:

15.2. Upon the occurrence of any one or more of the following events:

15.2.1. if CONTRACTOR persistently fails to perform the Work in accordance with the Contract Documents (including, but not limited to, failure to supply sufficient skilled workers or suitable materials or equipment or failure to adhere to the progress schedule established under paragraph 2.9 as adjusted from time to time pursuant to paragraph 6.6);

15.2.2. if CONTRACTOR disregards Laws or Regulations of any public body having jurisdiction;

15.2.3. if CONTRACTOR disregards the authority of ENGINEER; or

15.2.4. if CONTRACTOR otherwise violates in any substantial way any provisions of the Contract Documents;

OWNER may, after giving CONTRACTOR (and the surety, if any,) seven days' written notice and to the extent permitted by Laws and Regulations, terminate the services of CONTRACTOR, exclude CONTRACTOR from the site and take possession of the Work and of all CONTRACTOR's tools, appliances, construction equipment and machinery at the site and use the same to the full extent they could be used by CONTRACTOR (without liability to CONTRACTOR for trespass or conversion), incorporate in the Work all materials and equipment stored at the site or for which OWNER has paid CONTRACTOR but which are stored elsewhere, and finish the Work as OWNER may deem expedient. In such case CONTRACTOR shall not be entitled to receive any further payment until the Work is finished. If the unpaid balance of the Contract Price exceeds all claims, costs, losses and damages sustained by OWNER arising out of or resulting from completing the Work such excess will be paid to CONTRACTOR. If such claims, costs, losses and damages exceed such unpaid balance, CONTRACTOR shall pay the difference to OWNER. Such claims, costs, losses and damages incurred by OWNER will be reviewed by

ENGINEER as to their reasonableness and when so approved by ENGINEER incorporated in a Change Order, provided that when exercising any rights or remedies under this paragraph OWNER shall not be required to obtain the lowest price for the Work performed.

15.3. Where CONTRACTOR's services have been so terminated by OWNER, the termination will not affect any rights or remedies of OWNER against CONTRACTOR then existing or which may thereafter accrue. Any retention or payment of moneys due CONTRACTOR by OWNER will not release CONTRACTOR from liability.

15.4. Upon seven days' written notice to CONTRACTOR and ENGINEER, OWNER may, without cause and without prejudice to any other right or remedy of OWNER, elect to terminate the Agreement. In such case, CONTRACTOR shall be paid (without duplication of any items):

15.4.1. for completed and acceptable Work executed in accordance with the Contract Documents prior to the effective date of termination, including fair and reasonable sums for overhead and profit on such Work;

15.4.2. for expenses sustained prior to the effective date of termination in performing services and furnishing labor, materials or equipment as required by the Contract Documents in connection with uncompleted Work, plus fair and reasonable sums for overhead and profit on such expenses;

15.4.3. for all claims, costs, losses and damages incurred in settlement of terminated contracts with Subcontractors, Suppliers and others; and

15.4.4. for reasonable expenses directly attributable to termination.

CONTRACTOR shall not be paid on account of loss of anticipated profits or revenue or other economic loss arising out of or resulting from such termination.

#### **CONTRACTOR May Stop Work or Terminate:**

15.5. If, through no act or fault of CONTRACTOR, the Work is suspended for a period of more than ninety days by OWNER or under an order of court or other public authority, or ENGINEER fails to act on any Application for Payment within thirty days after it is submitted or OWNER fails for thirty days to pay CONTRACTOR any sum finally determined to be due, then CONTRACTOR may, upon seven days' written notice to OWNER and ENGINEER, and provided OWNER or ENGINEER do not remedy such suspension or failure within that time, terminate the Agreement and recover from OWNER payment on the same terms as provided in paragraph 15.4. In lieu of terminating the Agreement and without prejudice to any other right or remedy, if ENGINEER has failed to act on an Application for Payment within thirty days after it is submitted, or OWNER has failed for thirty days to pay CONTRACTOR any sum

finally determined to be due, CONTRACTOR may upon seven day's written notice to OWNER and ENGINEER stop the Work until payment of all such amount due CONTRACTOR, including interest thereon. The provisions of this paragraph 15.5 are not intended to preclude CONTRACTOR from making claim under Articles 11 and 12 for an increase in Contract Price or Contract Times or otherwise for expenses or damage directly attributable to CONTRACTOR's stopping Work as permitted by this paragraph.

## ARTICLE 16 - DISPUTE RESOLUTION

If and to the extent that OWNER and CONTRACTOR have agreed on the method and procedure for resolving disputes between them that may arise under the Agreement, such dispute resolution method and procedure, if any, shall be as set forth in Exhibit GC-A, "Dispute Resolution Agreement," to be attached hereto and made a part hereof. If no such agreement on the method and procedure for resolving such disputes has been reached, and subject to the provisions of paragraphs 9.10, 9.11, and 9.12, OWNER and CONTRACTOR may exercise such rights or remedies as either may otherwise have under the Contract Documents or by Laws or Regulations in respect of any dispute.

## ARTICLE 17 - MISCELLANEOUS

### Giving Notice:

17.1. Whenever any provision of the Contract Documents requires the giving of written notice, it will be deemed to have been validly given if delivered in person to the individual or to a member of the firm or to an officer of the corporation for whom it is intended, or if delivered at or sent by registered or certified mail, postage prepaid, to the last business address known to the giver of the notice.

### 17.2 Computation of Times:

17.2.1. When any period of time is referred to in the Contract Documents by days, it will be computed to exclude the first and include the last day of such period. If the last day of any such period falls on a Saturday or Sunday or on a day made a legal holiday by the law of the applicable jurisdiction, such day will be omitted from the computation.

17.2.2. A calendar day of twenty-four hours measured from midnight to the next midnight will constitute a day.

### Notice of Claim:

17.3. Should OWNER or CONTRACTOR suffer injury or damage to person or property because of any error, omission or act of the other party or of any of the other party's employees or agents or others for whose acts the other party is legally liable, claim will be made in writing to the other party within a reasonable time of the first observance of such injury or damage. The provisions of this paragraph 17.3 shall not be construed as a substitute for or a waiver of the provisions of any applicable statute of limitations or repose.

### Cumulative Remedies:

17.4. The duties and obligations imposed by these General Conditions and the rights and remedies available hereunder to the parties hereto, and, in particular but without limitation, the warranties, guarantees and obligations imposed upon CONTRACTOR by paragraphs 6.12, 6.16, 6.30, 6.31, 6.32, 13.1, 13.12, 13.14, 14.3 and 15.2 and all of the rights and remedies available to OWNER and ENGINEER thereunder, are in addition to, and are not to be construed in any way as a limitation of, any rights and remedies available to any or all of them which are otherwise imposed or available by Laws or Regulations, by special warranty or guarantee or by other provisions of the Contract Documents, and the provisions of this paragraph will be as effective as if repeated specifically in the Contract Documents in connection with each particular duty, obligation, right and remedy to which they apply.

**Professional Fees and Court Costs Included:**

17.5. Whenever references is made to "claims, costs, losses and damages," it shall include in each case, but not be limited to, all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs.